Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 13-CV-02337 (ARR)(SMG)
Action # 1
---x
ANWAR ALKHATIS,

Plaintiff,

- against -

NEW YORK MOTOR GROUP LLC, et al.,

Defendants.
---x
Case No. 13-CV-5643 (ARR)(SMG)
Action # 2
SHAHADAT TUHIN,

Plaintiff,

- against -

NEW YORK MOTOR GROUP LLC, et al.,

Defendants.
---x
Case No. 13-CV-7291 (ARR)(SMG)
Action # 3

BORIS FREIRE and MIRIAM OSORIO,

Plaintiffs,

- against -

NEW YORK MOTOR GROUP LLC, et al.,

Defendants.
---x

C A P T I O N (Cont.)

---------------------------------------x
Case No. 13-CV-7290 (ARR)(SMG)
Action # 4
SIMON GABRYS,
Plaintiff,
- against -
NEW YORK MOTOR GROUP LLC, et al.,
Defendants.
---------------------------------------x
Case No. 14-CV-2980 (ARR)(SMG)
Action # 5

ZHENGHUI DONG,
Plaintiff,
- against -
NEW YORK MOTOR GROUP LLC, et al.,
Defendants.
---------------------------------------x
Case No. 14-CV-2981 (ARR)(SMG)
Action # 6
NASRIN CHOWDHURY,
Plaintiff,
- against -
NEW YORK MOTOR GROUP, LLC, et al.,
Defendants.
---------------------------------------x

March 30, 2015
11:50 a.m.

C A P T I O N (Cont.)

VIDEOTAPED DEPOSITION of JULIO ESTRADA, held at Rikers Island, located at 60 Hazen Street, East Elmhurst, New York 11370, before Anthony Giarro, a Registered Professional Reporter and a Notary Public of the State of New York.

A P P E A R A N C E S :

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A P P E A R A N C E S (Cont.)

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BY: ROBERT J. BRENER, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

* * *

J U L I O E S T R A D A, after having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. LANE:

Q Mr. Estrada, my name is Peter Lane. I'm an attorney for five former customers of New York Motor Group: Anwar Alkhatib, Boris Freire, Simon Gabrys, Zhenghui Dong and Nasrin Chowdhury. My clients have all filed claims against New York Motor Group related to auto loans that they had entered into when they were purchasing cars at New York Motor Group.

In all of the cases, we've also named you as a defendant. There is an additional case, filed on behalf of Shahadat Tuhin, Mrs. Ariana Lindermayer, who is Mr. Tuhin's counsel. All these cases have been related in federal court in Brooklyn. And we're in the midst of discovery in these lawsuits. And we're seeking that we have a deposition today.

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We had an order from the court to have corrections produce you for the deposition.

So these other people are attorneys for the defendants in the case. And I'll let them explain who they are, what they're doing as well.

MR. LANE: Do you want to do all of that on the record?

MR. SIMON: For the record, I just object to the accuracy of your statement. You said the lawsuits arise out of their finance and purchases. They also arise out of the claims, arising out of the actual sales also, the rational purchases and finance.

MR. LANE: Okay.

MR. SIMON: Did you want to put on the record the case that you're --

MS. LINDERMAYER: I'm representing Shahadat Tuhin in his case as one of the consumers.

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MR. GROSSMAN: I represent M&T Bank in three of the cases: Gabrys, Tuhin and Chowdhury.

MR. BRENER: Robert Brener. I represent a defendant in two of the cases, in the Freire and Dong case. I represent Santander Consumer.

MR. SIMON: My name is Richard Simon. I represent the dealership defendants who would include New York Motor Group, Mamdoh Eltouby and his daughter, Nada Eltouby, who are named as defendants in all cases in the context of these transactions. And I also represent them.

They're also named as coconspirators with Julio Estrada, named by the plaintiffs in these lawsuits under Civil RICO, claiming that you conspired with them to wrongfully cause damage or harm to the plaintiffs.

And I would ask as a

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courtesy to Mr. Estrada, I have here just the first page of the order for production. And the six cases are named. I would just want to show him the first page for production so he could see the plaintiffs' names who brought these lawsuits in which he's named in each one as the party defendant. May I show him?

MR. LANE: Sure. Off the record.

(A discussion was held off the record.)

MR. SIMON: Did you want to mark that as an exhibit, that he was shown? You don't have to.

MR. LANE: Yes. Let's do that.

MR. SIMON: I just want to make it clear that the page I gave him, which was the first page of the order produced, doesn't have the listed defendants. I mentioned who I represent. And he should be told

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that he's a named defendant.

MR. LANE: I'm going to explain everything. We're going to put everything on the record, so that Mr. Estrada knows exactly what's going on and why we're here.

Let's mark this as Exhibit 1.

(The above-referred-to document was marked as Plaintiffs' Exhibit 1 for identification, as of this date.)

Q Mr. Estrada, we've marked this as Exhibit 1 for the deposition. And as Mr. Simon had explained, it does list all of the cases that have been related that we're here about today.

I want to give you as much information as possible, so that you understand what's happening. These six lawsuits are pending now in Federal District Court in Brooklyn. In the five lawsuits that I'm involved in -- New York Motor Group, Planet Motor Cars, Mamdoh

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Eltouby, his daughter, Mamdoh Eltouby, and you -- have all been named as defendants. Do you know anything about these lawsuits?

A In accordance -- well, by me reading one or two names there, I remember when the first one or the second one had one or two names, they had first got together to file, if I'm not mistaken, what is called a class action lawsuit against New York Motor Group.

At that time -- at that time, I was an employee on the company of New York Motor Group as an independent contractor. And cases were beginning to be filed against New York Motor Group.

Q Do you remember ever coming to court for a New York Motor Group case?

A In the past, yes, but not in respect to any of those clients that are mentioned in Exhibit 1.

Q But while you were an employee -- and let's just establish. So you worked at New York Motor Group?

JULIO ESTRADA

A I was an independent contract for New York Motor Group. I will be brought in from a case-to-case -- a deal-to-deal case -- excuse me. A deal-to-deal basis to do deals for.

Q I don't really want to go into substantive questions right now. I was asking if you remembered going to court on any of these cases before, just to understand if you have any familiarity with these lawsuits or the nature of these lawsuits.

A I have.

Q At the moment in all of these lawsuits, there are claims against you and Mamdoh Eltouby for having conspired together to defraud consumers. I've actually been in contact with Mr. James Kousouros.

A James Kousouros is my attorney.

Q Is your attorney for criminal cases?

A My criminal cases that have

been brought up against me. In respect to other clients, they have been involved as well with New York Motor Group.

Q Have you retained Mr. Kousouros to represent you, related to these civil cases?

A No, sir. Before your introduction to me, I was never aware of any situations pertaining to any civil matters brought against me. But, yes, I was aware of class action matters brought against New York Motor Group in the past and on these cases as well.

Q I contacted Mr. Kousouros probably two months ago. And I sent him a summons for you to be deposed. And Mr. Kousouros told me that he couldn't accept service of the summons and told me that he was not retained to represent you, related to these cases; and that is correct?

A That is correct, sir.

Q Did he talk to you about this at all? And don't tell me anything

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that you ever discussed with Mr. Kousouros. But did he contact you about having received a summons?

A No, sir.

Q So when Mr. Kousouros wouldn't accept service of the summons, I asked the judge in our cases to issue an order to have the department of corrections produce you for this deposition.

And I received that order and then served it on the department of corrections who arranged for this to happen. The order is simply that the department of corrections was to produce you to sit here and be here for a deposition.

A I totally understand, sir.

Q There is no order for you to say anything. And I'm going to have several questions I'd like to go through about your work at New York Motor Group, your relationship with Mamdoh Eltouby and your interactions with my clients and

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other customers who had come into New York Motor Group during the time that you worked there. And the other attorneys will also have questions about those areas as well, I'm sure.

MR. LANE: Off the record.

(A discussion was held off the record.)

Q Mr. Estrada, I want to be perfectly clear with you and make sure that if we go forward here with any questioning, you understand several things: I cannot give you any legal advice. And no one in this room can give you any legal advice.

But I want you to be aware: There are six cases. In two of those cases, I believe that I made service on you through substitute service on your wife at your Hackettstown residence?

A What do you mean by that, sir?

Q Summonses with the original pleadings with the complaint.

JULIO ESTRADA

A Oh, you mean you served them?

Q Were served, yes. And according to affidavits of service that I filed with the court, they were received by your wife at your house in Hackettstown.

A For me to show up at court?

Q That's right. But that was last year. I forget the exact month at this point. But I learned shortly after that, that you had been incarcerated.

So you are named as a defendant in all of these cases. But to be perfectly frank, I think in most of the cases, in four of them, we never served you. No one ever served you. You didn't get any notice of the lawsuits.

And in two of them, in the Freire and in the Gabrys cases, I believe that notice of the lawsuits was served by substitute service, received by your wife at your house in Hackettstown.

A Sorry. I apologize. Which

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two cases, sir?

Q Freire and Gabrys.

A Do you mind if I reach and grab the Exhibit 1?

Q Just. So you understand, there are six cases. And two of them, we did make service.

A Boris, Freire and who else?

Q Simon Gabrys.

A I know exactly who these people are. I remember them vividly. In any one of these clients you may mention to me, today's your lucky day because I remember every customer, even what they were wearing. I remember exactly who they are.

Q I want you to understand. I want to be very cautious about this because you had indicated -- when the corrections officer brought you here this morning, this was the first time that you had heard about this deposition; is that correct?

A That is correct.

JULIO ESTRADA

Q And that you have not spoken to Mr. Kousouros about this deposition?

A Never have.

Q As you are a defendant in these cases, you would certainly have the right to consult with an attorney about these cases and about your testimony here today.

A I am very aware of my rights, sir.

Q And are you aware of the Fifth Amendment right to not incriminate yourself?

A Absolutely.

Q I cannot provide you any legal advice. I just want to get an understanding of what it is you understand about the criminal process and the civil process. This is not a criminal case.

But there are claims against you for civil liability for a conspiracy to defraud consumers working with Mamdoh Eltouby.

JULIO ESTRADA

A Thank you for your courtesy and professionalism.

MR. LANE: Off the record.

(A discussion was held off the record.)

Q Again, I just want to be perfectly clear. It sounds like you understand what your Fifth Amendment rights are: Your right to not incriminate yourself. And you understand that you could have consulted and can consult with an attorney about these cases; is that correct?

A That is correct, sir.

Q I want to make sure that you understand that I'm not making any representations about what might come of you testifying today. There's going to be testimony. There's a court reporter who is taking down a record of everything that's being said.

And I'm not making any representations about how that might affect you or what we might do with that

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information. We may use it; we may not use it. I'm not making any representations to you, regarding the use of this testimony or your rights. And I just want to make sure that you understand that.

A Yes, sir.

MR. SIMON: I just have one question. Has he been sworn?

MR. LANE: He has been sworn.

MR. SIMON: Just so he knows, the questions you're going to be asking him, if he wants to, he's going to be testifying under oath, and that will be transcribed.

Q Have you testified at a deposition before?

A Numerous times, sir.

Q And you've testified in court before?

A Without a doubt, yes.

Q So you understand that you're under oath right now?

JULIO ESTRADA

A Yes, sir.

Q So you understand what it means to testify under oath?

A Yes, sir, the seriousness.

Q You understand that if you fail to tell the truth while testifying under oath, there could be serious consequences?

A Without a doubt, yes.

Q Court sanctions; and in addition, giving false testimony could be perjury and that could lead to criminal consequences; you understand that?

A Yes, sir; fully aware of it, sir.

Q Are you on any drugs or medications at the moment that would affect your ability to understand questions and to answer them?

A None whatsoever, sir.

Q Knowing all of this and having gone through all of this, you would be willing to speak to us about New York Motor Group and your work there?

JULIO ESTRADA

A Yes.

Q So let me just get some background on you.

If you would, could you state your full legal name?

A Julio Estrada.

Q Do you have a middle name?

A No, sir, also known as J Torres, also known as Jose Lorenzo.

Q Have you ever used other aliases?

A John DeSantos at New York Motor Group.

Q How old are you, Mr. Estrada?

A I just turned 40 years old on March 11th, sir.

Q Are you married?

A Yes, I am.

Q What is your wife's name?

A Claudia.

Q At the moment, you're incarcerated here at Rikers Island?

A That's correct, sir.

JULIO ESTRADA

Q What is your legal residence?

A My legal residence is 112 Knob Hill Road.

Q In Hackettstown, New Jersey?

A That is correct. 07840.

Q Could you tell me your wife's full name?

A My wife's name is Claudia Estrada.

Q What's the highest level of education you've reached?

A I have -- I got a bachelor's degree in business and science in San Juan University.

Q In San Juan, Puerto Rico?

A Yes, sir.

Q How long have you lived at 112 Knob Hill Road in Hackettstown, New Jersey?

A Approximately six years, if I'm not mistaken.

Q Where did you live before that?

JULIO ESTRADA

A I lived before that in the Bronx, sir.

Q Could you tell me your address in the Bronx?

A It was 814 Vincent Avenue, Bronx, New York.

Q How long did you live at that address?

A I lived there seven years, sir.

Q I think I asked you this before, but I just want to be clear.

You have worked at New York Motor Group -- is that correct? -- in Queens, New York?

A I was an independent contractor for New York Motor Group, sir.

Q What was your title?

A Excuse me?

Q Did you have a title there?

A No. I was basically a sales, slash, closer financer (as said).

Q Sales, slash, closer financer?

JULIO ESTRADA

A Yeah.

Q And you said that this was as an independent contractor?

A That is correct, sir.

Q Did you have a salary?

A I never had a set salary in New York Motor Group, sir.

Q How were you compensated for your work at New York Motor Group?

A I was compensated for my work in accordance to the deals that I closed and whatever the production, whatever the profit was in the deals, you know, in accordance to that, I was paid.

Q And what was the formula for determining how much money you would get paid?

A Technically -- technically, I was supposed to be getting paid 20 percent of whatever the gross was on the deals. But unfortunately for that company, New York Motor Group, it all ended up being whatever mood the owner was in.

JULIO ESTRADA

Q When did you start working at New York Motor Group?

A In December of -- December 2012, sir -- no. As a matter of fact, I apologize. I remember. It was exactly November 2012, one week before Thanksgiving.

Q The plane passing just then reminded me of something. I just want to backtrack and make sure one other thing is perfectly clear. You said you've testified before. So you probably understand this.

The court reporter is taking dictation. He's writing down everything that's being said. So it's important that he hears you. All of your answers need to be verbal answers, not shakes of the head or uh-huhs or uh-uhs, yes or no.

And since we are dealing with LaGuardia Airport close by, let's just all be conscious that when the planes start, we should just be quiet, so that the court reporter doesn't miss any testimony.

A I understand.

Q Thank you.

A No problem.

Q So you began working at New York Motor Group November 2012, one week before Thanksgiving?

A Yes, sir.

Q At that time, were you working anyplace else?

A When I started working at New York Motor Group at that time, was I employed by anyone else?

Q Anyone else, yes.

A No. At that time, I was employed by another dealership, sir.

Q What was the name of that dealership?

A Auto Palace in Woodside, New York; located in Woodside, New York.

Q Is that owned by the Kohananos?

A Yes.

Q So you were working at Auto

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Palace in November of 2012 as well?

A In November 2012, right before that, which was the last month I worked for Auto Palace, it must have been in June, June of 2012. My previous employer before I started working for New York Motor Group was Auto Palace. So at the time when I started working at New York Motor Group, I was not employed, sir.

Q So you left Auto Palace in June 2012?

A Yes, sir.

Q And then didn't have employment between June 2012 and November 2012?

A No, sir. June 2012, I didn't leave Auto Palace. I was arrested at Auto Palace, sir.

Q You were arrested at the location?

A At the location.

Q Are you sure that that was June 2012 and not December 2012?

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A No, sir. In December 2012 -- on December 2012, I was working at New York Motor Group.
Q You were arrested in June 2012?
A Yes, sir.
Q How long did you continue working at New York Motor Group?
A Until -- until 2014 -- until January of 2014.
Q During that time, from November 2012 to January 2014, did you work at any other auto dealerships?
A No, sir.
Q Did you do any independent contracting work for anyone else?
A No, sir.
Q So during November 2012 to January 2014, the only place you worked was New York Motor Group?
A That's correct.
Q Did you work there every day?
A No, sir.

JULIO ESTRADA

Q Did you work there Monday through Friday?

A The days that I was scheduled to work was Monday through -- Monday through Saturday.

Q How long were you there each day?

A I used to work anywhere from 12:00 to 10, 11:00 at night.

Q You had said that your agreement for compensation was 20 percent of the gross on the deals; is that correct?

A After costing out the deal, whatever the profit was, I used to get -- I was supposed to get paid 20 percent.

Q Could you explain what you mean by that: By costing out the deal?

A In accordance with what the cost of the vehicle was, in covering the costs of any aftermarket products that were purchased by the customers, because in the finance office, you sell aftermarket products to the customers,

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and after costing out the aftermarket products from the customers, at that particular time, they would -- the owner would do an evaluation -- would evaluate how much was left, how much did the deal profit. And in accordance to that, I was supposed to get paid 20 percent.

Q So, essentially, you would get 20 percent of the profit on the sale; is that correct?

A I was supposed to get paid. The reason I continue to say "supposed to" and don't agree with the statement that that's what I got because I never got it.

Q Did you get paid anything while you were at New York Motor Group?

A Yes, sir. I would get paid -- I would get paid in cash from the employer.

Q How often would the employer pay you in cash?

A On a Saturday. And Saturday when I couldn't get paid, I will have to

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wait to Tuesday.

Q Would he give you the same amount of money each time he paid you?

A No.

Q Do you know who the owner of New York Motor Group is or was?

A In accordance to your question, you mean the owner on file or who the actual owner is? I'm sorry for asking you the question.

Q I appreciate it. And, again, another housekeeping issue: If you don't understand any question, please let me know that, and I will rephrase it and make sure that you do understand it.

I'd like to know the answer to both of your questions back to me. So who hired you to work for New York Motor Group?

A Toby.

Q Who's Toby?

A Toby is the acting owner.

Q Do you know his --

A Eltouby.

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Q Is it Mamdoh Eltouby?
A Yes, sir.
Q You say he's the acting owner. Why acting owner?
A 'Cause in respect to the ownership of the dealership and in respect to B&B licensing and things like that, it makes you the owner of the establishment. He's not listed as the owner, official owner, in all of the documents.
Q You understood that there was another person who was also an owner of New York Motor Group?
A Yes, sir.
Q Who is that?
A A relative of his.
Q Do you know that name?
A I don't know her name.
Q Do you know Aleste Abreu?
A Doesn't ring a bell.
Q The relative of Mr. Eltouby that you think was the other owner --
A Aleste Abreu -- Aleste is --

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MR. LANE: Strike my last question. And I would like to hear what else Mr. Estrada has to say about Aleste Abreu.

A Aleste Abreu is the person that -- the original dealership, which is the mother head of the dealerships, New York Motor Group was just a division of Planet Motor Cars which is located in Hillside Avenue in the great County of Queens.

In Planet, Mr. Abreu, they are an employee that has worked with Toby for over 20 years. And Toby was putting numerous things under that individual's name.

Q So Aleste Abreu worked at Planet?

A Yes, sir. Works.

Q Let me just back up.

Do you know if Sadia Ibrahim is the name of the other owner of New York Motor Group?

A Those individuals that you

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have mentioned, sir, people that have been used for licensing purposes or permit purposes. But the actual individual that runs the establishment that gives out orders and what needs to be done or shouldn't is Mr. Eltouby.

Q Do you have a sense of why Mr. Eltouby was using other people for licensing?

MR. SIMON: Just note my objection to the form of the question.

A I'm not certain, sir.

Q How is it that you know that other people's names were listed as owners of the dealership?

MR. SIMON: Note my objection to the form. We're referring to New York Motor Group?

MR. LANE: Of New York Motor Group or Planet Motor Cars.

MR. SIMON: You have to just -- I was confused. I didn't know what dealership you were

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referencing.

A I'm sorry, sir. Can you repeat your question again?

Q Sure.

How did you come to know that other people were listed as owners of New York Motor Group and Planet Motor Cars?

A How did I know that information? 'Cause I was a trusted employee from that company.

Q So you saw documents that had their names on them?

A Yes, sir. I saw. I was spoken to. I was questioned as to advised to; numerous things, sir.

Q You had said, though, that it was Mamdoh Eltouby who hired you?

A That's correct, sir.

Q Did he hire you to work for Planet or just for New York Motor Group?

A For both corporations, to go back and forth in between dealerships between Planet and New York Motor Group.

JULIO ESTRADA

Q Did you ever physically work at Planet Motor Cars?

A Yes, sir.

Q Planet was at 160-14 Hillside Avenue?

A That is correct, sir.

Q And New York Motor Group was on Queens Boulevard?

A No, sir. It's on the top of that document you're holding. It says the name of the dealership with the address on top.

Q I know. But this says Planet. I just want to make sure we're establishing. So you did work at the location of 160-14 Hillside Avenue --

A Yes, sir.

Q -- for Planet?

And other times, you were working for New York Motor Group at 60-20 Northern Boulevard?

A What happens is in my case when you're an independent contractor for a dealership, sir, that doesn't

JULIO ESTRADA

necessarily, places me in one dealership at all times. They take me back and forth sometimes to work in different dealerships to complete my tasks which is of closing deals.

In respect to New York Motor Group, the majority of my time was spent at New York Motor Group.

Q But there were days where you were actually at Planet Motor Cars?

A Yes, sir.

Q When you were there, did you finish financing agreements with customers at Planet Motor Cars?

A Did I close out deals?

Q Yes.

A At Planet Motor Cars, no, sir. They were usually -- they were usually brought back with me to New York Motor Group.

Q So what did you do at Planet?

A At Planet, usually when they were customers, they wanted their money back or wanted not to proceed with the deal, my job was to go over there and explain to them numerous options as to why there still may be a possibility in me assisting them and making the deal favorable for themselves and their families.

And at that point, my job was to bring back the customer to New York Motor Group, sir. At New York Motor Group, then I had to proceed with giving them the introduction of this new deal that I was speaking of at Planet Motors and leaving them in their hands if they decided to move forward or not.

Q Why did you have to bring them back to New York Motor Group to close out the deal?

A The reason being is 'cause -- usually when a situation in a dealership got to a point, any discussion escalated in respect to the customer just wanting their money back or not proceeding with the deal, that means that

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the manager is just, like, rules in the car business. That means that the manager at that dealership didn't have a relationship or a way to communicate -- communicate any further with the customer in a positive way, not just for the customer but obviously for the dealership.

Q Who would ask you to go over to Planet to do that kind of work?

A My employer.

Q Mr. Eltouby?

A Yes, sir.

Q Did anybody else ask you to go over to Planet to do that?

A The only one I ever took orders from was Eltouby.

Q When did you first meet Mr. Eltouby?

A I met Mr. Eltouby about, like, eight years ago -- excuse me. I met Mr. Eltouby six years ago, sir. I knew of Mr. Eltouby for over nine, close to ten years. Mr. Eltouby's been in the

JULIO ESTRADA

car business for numerous years.

Q How did you first meet Mr. Eltouby?

A I was introduced to him by a contractor.

Q What contractor?

A Excuse me. Another individual that does financing as well. I'm sorry. That means that another individual that does financing as well introduced me to him.

Q Who is that?

A His name is James.

Q Do you know his last name?

A No, sir. I apologize.

Q That's fine.

Was James a contractor who did financing Mr. Eltouby?

A At that time?

Q Yes.

A Yes, sir.

Q Did you begin working for Mr. Eltouby six years ago?

A No.

JULIO ESTRADA

Q Did you ever work for Mr. Eltouby before November 2012?

A No, sir.

Q So you had said before that you were arrested in June of 2012?

A At Auto Palace, sir. By the way, I answered this question.

Q You did.

A Yes.

Q When did you first talk with Mr. Eltouby about working at New York Motor Group?

A When I was working at Auto Palace, Mr. Eltouby used to -- used to attempt to -- to bring me to his company. He used to discuss with me the possibilities of me working for his establishment and how I would be -- instead of getting a flat pay like I was initially getting at Auto Palace, I will now get paid commission like I rightfully deserve and I will get paid 20 percent and how I would get paid Saturday, guaranteed, with no issues, no ifs, ands

JULIO ESTRADA

and buts. That's what I was promised by the gentleman: To come work in his recruitment process, of course, 'cause he was just recruiting.

Q Would he call you or would he come visit you at Auto Palace?

A He would call and visit. He would -- he would come to the dealership. He would come to the dealership. Or he would send other employees from his company to come get me, so that way I could come see him.

Q Would he come there specifically to speak --

A To speak to me, that's correct.

Q When did he start doing that?

A In the beginning of 2013, mid 2013, sir.

Q You said you started working for him in 2012?

A No, sir. Your question was, when he first started --

JULIO ESTRADA

Q When he first started coming to Auto Palace.

A By 2011, 2011. Mid 2011 -- the beginning of 2011.

Q So at the beginning of 2011 was when he would start coming to Auto Palace --

A Recruit me.

Q -- or calling to recruit you?

A That's correct, sir.

Q Before that time, did you have any other conversations with Mr. Eltouby?

A Yes, sir. We used to do business together. We used to broker deals. We used to use his banking institutions to broker deals with other dealerships.

Q Can you explain what you mean by that?

A By that, I mean the following. I used to work for a dealership called Auto Palace. At Auto

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Palace, being that it was an independent contractor -- excuse me. Being that it was an independent dealer, not a franchise, they didn't have the capabilities of having their own banking institutions, which meant that unless you were a franchise in the City of New York, the City of New York dealerships, banking institutions were not signing up dealerships.

They were not involved, affiliated or sponsored through another franchise, unless, of course, you were already grandfathered into the business, like in Mr. Eltouby's case, that he's not a franchise but yet has banking institutions affiliated with him, 'cause he was grandfathered into the situation.

Q Let me ask you this question.

Who was the owner of Auto Palace when you worked there?

A Jenny.

Q Jenny Kohanano?

JULIO ESTRADA

A Yes, sir.

Q Was her husband involved with Auto Palace as well?

A Her husband, the same situation with Toby. He's the boss. But he's not the boss.

Q His name was Danny?

A Danny Kohanano, that's correct.

Q So you felt like you really worked for Danny Kohanano?

A I worked for Danny. Danny Kohanano paid me on a weekly basis. Never no problems, ever.

Q Danny hired you to work at Auto Palace?

A That is correct, sir.

Q Did Danny Kohanano know Eltouby?

A That is correct.

MR. SIMON: When are we going to get to these deals?

MR. LANE: I understand your discomfort, Mr. Simon. But we shall continue.

Q Did Danny Kohanano ever ask you to contact Mamdoh Eltouby, so that you could use Mr. Eltouby's connection to a financial institution to finance car sales through Auto Palace?

A That's exactly how it went, sir. I was the bridge that introduced Danny Kohanano and Mr. Eltouby to each other. Danny and Eltouby were not -- were -- have been in the automobile industry over a decade, respectively. But they were not doing business with each other.

Q Would it be accurate to say that Mr. Kohanano needed Mr. Eltouby's assistance in order to get financing agreements for the cars and the sales at Auto Palace?

A Yes.

Q So when did you first reach out to Mr. Eltouby to assist Auto Palace with financing?

A I reached out to Mr. Eltouby

JULIO ESTRADA

after -- when I first -- in order for you to understand my question, I have to momentarily tell you how it happened.

Q Please.

A When I first started working with Mr. -- Danny Kohanano, he didn't have any banking institutions. At that point, I was able to get him some banking institutions to assist him, sign him and his dealership up, and his actions -- his actions in his practices, as well as me working with them, led to the fallout of his situation with the banking institution who is currently represented by this gentleman, which I don't know his name (pointing), which was Santander. At that time, he had a fallout with Santander.

At that moment, he no longer had any banking institutions left. And I introduced him in 2009, in mid 2009, to Mr. Eltouby after I was spoken to him by James, referred to him by James, which was the other broker, sir.

JULIO ESTRADA

Q Auto Palace did have some contracts with financial institutions?

A Yeah, at that time. Before he met Eltouby, Auto Palace had their own banking institution that they were doing business with on their own under their flag of Auto Palace.

Q But in 2009, they didn't have any?

A No. There's a -- there's different divisions in banking institutions, especially -- not just in franchise or independent dealers. There's primary, subprimes, and there's obviously others -- other banking institutions, which is subprime lenders, that you have to sign full resources for and stuff like that.

Q Do I understand that Mr. Kohanano lost his contract with Santander Consumer?

A Yes, sir. He was cut off by Santander financially.

MR. SIMON: Note my

JULIO ESTRADA

objection. You're referring to Auto Palace's agreement with Santander, not Kohanano?

MR. LANE: That's correct.

MR. SIMON: There was an agreement with the dealership.

MR. LANE: Yes. I agree with your characterization.

Q I wanted to know if Auto Palace lost its contract to assign financing agreements to Santander.

A Yes, sir.

Q When that occurred, it was about 2009, you said?

A If I'm not mistaken, it was around that time.

Q When that occurred, did that result in Auto Palace not having a subprime lender to work with?

A That is correct. He had -- he continued -- Auto Palace, we had subprime lenders that we were still doing business with but not to the extent that we needed to in order to cover the

JULIO ESTRADA

spectrum of business that Auto Palace was doing.

At that point, by Auto Palace having a fallout with the banking institution, Santander, that is what triggered Mr. Kohanano asking me to introduce -- introduce him to Mr. Eltouby, so they could do future business.

Q Did Mr. Kohanano specifically asked you to introduce him to Mr. Eltouby?

A No. He never asked me to meet him. He actually told me: You take care of that, you deal with him yourself.

Q Can you tell me exactly what Mr. Kohanano asked you to do? What is it he asked you to do?

A He asked me to be the bridge in between both companies, at that time, being Auto Palace and Planet Motors, so that that way, they could do business with each other which is called brokering business with each other.

JULIO ESTRADA

Q When you approached Mr. Eltouby about this in 2009, he agreed to work with you and with Auto Palace?

A No. Mr. Eltouby, at that time, told me that he's not interested in doing any business with Auto Palace, 'cause the reputation that Auto Palace has, he does not want to be affiliated, One.

And Two, he did not want to involve any of his banking institution with a company that does business to the degree that Auto Palace at that time was doing, sir, and that he worked very hard to obtain his banks to throw them out the window.

Q That was about 2009, you said?

A That is correct, sir.

Q About two years later in 2011, Mr. Eltouby started to come to Auto Palace to talk to you and to encourage you to come work for him?

A That's correct, sir.

JULIO ESTRADA

Q Did you have any other contact or conversations with Mr. Eltouby between 2009 and 2011?

A No, sir. Conversations?

Q Yes.

A Oh, yes, of course. Without a doubt throughout the years, we've had numerous conversations.

Q When did Mr. Eltouby tell you that he was going to hire you to work for New York Motor Group?

A 2013, sir. Excuse me. 2013.

Q I'm sorry.

You had said before November 2012, is when you started working at New York Motor Group.

A In November 2012, is when I started working for New York Motor Group.

Q Was it in November when he told you that that's when he wanted you to work for him?

A Yes. In 2013, like in the month of February 2013, that's when I was

JULIO ESTRADA

told that I was going to do business, financing as well, closing deals for Planet and for New York Motor Group.

Q Did you start financing at New York Motor Group immediately when you began working there in November 2012?

A No, sir.

Q What did you do when you first started at New York Motor Group?

A I was waiting approximately two weeks so they could fix the phones and the Internet. And then that's when I started working.

Q Did Mr. Eltouby know that you had been arrested when he hired you to work at New York Motor Group?

A Did Mr. Eltouby know that I had been arrested? No, sir. I never discussed that with him. The reason we never discussed that -- I never discussed that with him is because I never filled out an employment package for his said company.

Q Did he ever ask you for your

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Social Security number?

A No, sir. I was an independent contractor.

Q Did he ever ask you to complete a W-9 form?

A Yes. I know exactly what it is. He did ask me for it. I gave it to him. I gave him the name and the seal of my corporation.

Q What was the name of your corporation?

A PTG Enterprise.

Q Did you have a TIN for PTG Enterprise?

A No.

Q A tax identification number?

A No.

Q So do you recall when you completed the W-9, did you put your Social Security number on it?

A I gave it to him.

Q You gave him your Social Security number?

A No, not my Social Security

JULIO ESTRADA

number. I never gave him my Social Security number. In fact, all he did was give me the document. I never even finished completing it. I never -- I never -- to answer your question, sir, I never completed the document.

After it was given to me and we sat together, he asked me for my -- for my seal. I gave him my seal of my company. The document was never finished because I know that because I asked for a copy of it. I never got a copy of it. I wanted a copy to keep for my files.

Q So you never completed the W-9 form?

A No, sir.

Q And he never took it from you?

A No, sir. I never even -- my corporation, at that time, I didn't even get a check from them. We get paid cash from New York Motor Group.

Q Did he ask you if you had ever been arrested?

JULIO ESTRADA

A No, sir, he never asked me. If I had been arrested, no, he never asked me. He asked me -- the only question is: Have you ever had any problems in respect to financing with the law in the State of New York or any other state for that manner. That's the only question he asked me. And I said, No, sir.

Q I'm just a little confused by your last response.

MR. LANE: Could you read it back?

(The requested portion was read back by the court reporter.)

MR. SIMON: Could we go off the record for a second?

MR. LANE: I didn't agree to go off the record.

Q I'm confused.

Are you saying that what Mr. Eltouby asked you was: Had you ever been arrested in connection with auto financing?

JULIO ESTRADA

MR. SIMON: Note my objection to the form of the question.

MR. LANE: I'm asking for clarification.

A He asked -- that means I could proceed?

Q Proceed.

A He asked me -- he asked me: Have you ever had any conviction or any problems with the law in respect to auto financing in the State of New York or any state for that manner. And I said no.

And then he reminded me that his -- that his camera was on in his office and then I said okay. Then I answered the question.

Q But you had already been arrested at that point?

A No, sir. At that point when I had been arrested, my arrest was -- had nothing to do with financing, sir.

Q Your June 2012 arrest?

A My arrest in June 2012 was

JULIO ESTRADA

my -- the reason I was arrested was for making false -- for obtaining -- obtaining funds for -- from -- from people in order to provide a service which I never gave. Those were the allegations -- the alleged -- the allegations held against me.

Q So when Mr. Eltouby asked you if you had ever been convicted or had problems with the law related to banking and financing, you felt by answering no, that you weren't --

A He never asked the question, convicted. He just asked: Have you ever had any problems with the law in respect to auto financing in the State of New York or any state for that manner. And I said no, sir.

Q And you felt that you were answering truthfully when you told him?

A That is correct, sir.

Q At New York Motor Group, you said it took a couple of weeks before you fully started working?

JULIO ESTRADA

A It took approximately two weeks. There was a glitch with the Internet provider and the phone lines. As soon as that -- they were able to fix that, we resumed business as usual. And I started working for them.

Q By December 2012, you were doing financing at New York Motor Group?

A By mid November, sir.

Q By mid November?

A That is correct. The reason I say that is because I remember clearly on Thanksgiving evening, I was there until 12:00 at night, waiting to get paid.

Q Did anyone supervise your work --

A Yes.

Q Who?

A Mr. Eltouby.

Q Just make sure to let me finish my question completely before you answer. I just want to make sure that he hears my entire question and gets it down

JULIO ESTRADA

before you answer it.
A I apologize. Sorry.
Q My question was: Did anyone supervise your work at New York Motor Group, and you said that, yes, Mr. Eltouby was your supervisor?
A That is correct. Mr. Eltouby.
Q Did anybody else supervise you?
A No, sir.
Q Did you supervise anyone?
A Did I supervise anyone?
Q Yes.
Did you have any employees that worked --
A That worked --
Q -- under you?
A First off, I'm sorry. You had just told me to wait for you to answer a question and I interrupted you again. I apologize.
Q That's okay.
A No, sir. My -- my position

JULIO ESTRADA

at that establishment was just to close out deals, sir. That was my job. I was in the office, in the last office all the way in the back with two cameras. And when it was time to bring a client in the office, they would bring me a folder, like the one in this table right there (pointing), sir.

And at that point, they would introduce me to the customer. The sales rep would introduce me to the customer. I would go over, confirm identification of the customer in front of the customer under the presence of the camera. I would inform the customer that everything was being recorded by audio and video for their protection and the protection of their bank and the protection of the banking institutions.

And then I would proceed it to confirm identity and confirm -- ask them previous questions in respect to their credit to be certain that that person was who they claimed to have been.

JULIO ESTRADA

Q Why did you tell people about the cameras?

A The reason I told people about the cameras is 'cause in numerous times when -- in the automobile industry when you deal with clientele, a lot of people -- a lot of clients, unfortunately, get -- after signing their documents and going home and then two or three months later, there's a saying in the car business that says that they wake up from the ether or they have buyer's remorse, which after going through their documents and going over their stuff with other people, other people have their opinions, stuff like that.

So I always make sure that I explained it to them, so that that way every single time, they left the office with copies of all their documents. He or she cannot come back and say that I did not get copies of my stuff.

Q So as far as you understood, everything going on in your office was

JULIO ESTRADA

being recorded?

A A hundred -- not as far as I understood, sir. I knew that for a fact. It was confirmed, not just once, twice, not just on occasions when customers had problems. On occasions when they were disputes, police officers were called in. On occasions when they were -- customers, numerous times.

I know for a fact we would go to the back office, which was where Toby's office was located at, and he would rewind and play and put -- play the audio for police officers, for bankers, for whomever had any questions pertaining to any situation, not just banking institutions.

Q How were these recordings made? On video?

A Digital video.

Q Digital video?

A Yes, sir.

Q Were things saved to disk after that?

JULIO ESTRADA

A Yeah -- no. They were never saved in the disk. They were saved into a tower that was placed in the controller's room. It was stored in the hard drive, in the controller's room.

Q Where was the controller's room?

A As you exit Toby's office, on the left-hand side, sir. It was a trailer.

Q I understand it's a trailer. And we've heard testimony from Eltouby about the layout of the space. So let me make sure I understand it correctly. It's a trailer?

A Mm-hmm.

Q And if I walk in the front door with the lot behind me, there's an office on the left?

A Office on the left belonged to Toby and his daughter.

Q And on the right?

A Belong to -- that was New York Motor Group to John DeSantos.

JULIO ESTRADA

Q Did you work in that office?

A Yes. That would be me, sir, as I stated before, with my alias for New York Motor Group.

Q So in the office where Nada or Eltouby worked, there was a hard drive for a computer, and all of the digital video of the recordings was being stored in that hard drive?

A Let me explain to you thoroughly so you could understand.

Q Please. If you understand the whole technical process, storing those videos, please explain it.

A From A to Z, I understand clearly. When you walk into the trailers, if you walk towards the right, that was where my office was -- that's where I was working at, out of that office. I was working under the alias of John DeSantos in that office.

Towards the left, sir, right before reaching the door of where Nada and Mr. Eltouby used to sit at before I

JULIO ESTRADA

signed each and every customer, there was a door on their right. That's where the storage was at for the filing, for the files. And there was a tower there that had -- that was connected to the cameras.

As you enter Mr. Eltouby and Nada's office on the right, there was a plasma, just like there is right above this camera (pointing). There's a plasma there. They had screens and pictures of every office, every camera in the premises.

On the right where Toby and Nada used to sit at, right in front of them was the TV that had the screens. On the right, they had another computer like this (pointing). But it was a PC. This is a laptop. They had a PC. In the PC, they also had the screens that were attached to every camera.

Every time I would sign a customer out, they would watch the video cameras and the videos on the PC, as I was signing any client out. If they had

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any questions or anything like that or anything that they wanted to speak to me to in respect to that deal or anything pertaining to any other deal, what they would do is call me on the line. And at that moment, I would excuse myself from the client and tell them I have a call and I would speak to Toby or Nada. And they would -- they would tell me what was their concern in respect to the deal or the client had had.

Q You keep saying "they". During that description, you said "they." Were you referring to both Toby and Nada?

A Yes, sir.

Q Was there anybody else that you were referring to?

A The only individuals that were in there was Nada and Toby. The only individual that gave me any instructions or may have had any concerns in respect to any deal was Toby. Nada would -- never had, never had the authority, nor had the capability or the

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intelligence pertaining to deals to be able to question me or tell me or deter me from any way, shape or form towards any deal. She obviously didn't have the experience that Mr. Eltouby or myself had in respect to deals.

Q How often was Mr. Eltouby at the dealership, at New York Motor Group?

A Every day.

Q He was there every day?

A Mr. Toby, the majority of the time, throughout the length of the day, obviously was at Planet Motor Cars. But did he -- come to New York Motor Group every day -- every single day, he would come there, except days that he was at the auction, which was Wednesdays, Fridays and Tuesday morning. Tuesday night, he was at New York Motor Group to come pick up people to go pick up the cars.

Every time he would come back from the auction, he would come back to the dealership. But he would be in

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and out every day of that dealership except the days obviously when he was in the auction. After being done with the auction, he would definitely come into the dealerships.

Q And on the days he would come by, would he go into the controller's office, you called it?

A To the controller's office?

Q The office opposite yours.

A Where the filing cabinets are at and the tower where they kept the information to the videos, no, sir. He would go in there if only he needed a file for which he would usually tell the receptionist to retrieve it from the filing office.

Q Then who was monitoring the video recordings on the screen?

A When I was signing customers at the time when Toby was or wasn't there? Toby, a hundred percent. Toby used to call me from the auction and tell me -- when the customer was in there, he could see it from his phone and tell me what car is this customer there on. How much did he give you? I mean, how much did he give down payment? How did he give his down payment? How much did he give you before he walked in there? How much does he have to give to COD? If anything, I would call him, guaranteed.

As soon as he would hang up with me, Nada's phone was ringing to then confirm everything I just told him with Nada. And now and then Nada would have to go -- he would see Nada through the cameras, going through the receipt book or whatever the case may be to confirm -- to confirm that everything I just informed him of was facts.

Q So he had the ability, as far as you understood, to see the video on his phone?

A Not -- to answer your question, sir, not as far as I understood. I knew that for a fact. He used to call me and tell me what I was

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doing at that time that I was doing and what I would just say to the customer, if I didn't say it or if I did say it, whatever it was, as live access to any time I signed up a customer.

Q You know that he had that access on his phone?

A Of course. He would call me and tell me while I'm with the customer. When I'm with the customer, he would tell me clearly if I said anything wrong, because look, I'm not going to say -- or if I give any misleading information to a customer or any false promise to a customer, anything, whether good or bad.

Whatever it was, obviously if it would put his company in a liable situation, let's just say, or the deal or the customer for that manner, he would tell me, yo, don't tell him that, this, that and the third. And any customer, after I signed out, if he was there live, like in the flesh, in the building, in the trailer, by the time the customer

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would finish and leave out of his office, either leave out of my office, will have to speak to Toby every single night.

And they would be asked everything I just told you in respect to: Did you give any money to J before you walked in there? How much money you gave? How did you give the money? When you was there, did you get your copy, your paperwork? Let me see copies of your paperwork. He would open up the envelope that I gave the customer their paperwork. He would go over all the documents? Did you understand this?

Keep in mind: He already had me recorded, explaining all this to the customers. He would still go over each and every one of those documents with the customer and ask them: Did you understand this thoroughly? So you happy with the car? You know it's a used car or you didn't buy a warranty or you did buy a warranty? This is what you're going to spend, every single customer,

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unless he was not in the trailer.

If he was not in the trailer, obviously he would then tell the customer -- he would call the customer when I wasn't there or the times that I was not in the building, the dealership.

Q One other question here on the videos: Was there a tech guy? Was there somebody who New York Motor Group hired to take care of the computers and any tech problems?

A No, sir.

Q Can you explain to me the process that a customer goes through from seeing the car on the lot with the salesperson to them being --

A How do they make it to my office?

Q Yes.

How does somebody get from seeing an advertisement or seeing the lot and then making their way to your office?

A You want to know the steps in how do they make it to the last office which is my office?

Q Yes.

MR. SIMON: You're limiting this to New York Motor Group?

MR. LANE: At the moment to New York Motor Group.

A To New York Motor Group?

Q Yes.

A It's all basically standard procedure. But I'm going to explain to you in respect to New York Motor Group. He or she goes online. And they see online. What they do -- they do a search of what vehicle they're looking for. At that time, they locate the vehicle. They call into the dealership to find out the vehicle, if said vehicle is still available. He or she confirms who they spoke to. Hopefully, they confirm what salesperson they spoke to.

At that point, the customer -- the person comes down, excuse me. The person comes down, asks to see the Carfax on the vehicle. They get the

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Carfax. Then when they see the Carfax and they go -- then they want to know if they could buy the car cash or credit. If they decide to move forward, purchasing it in credit, they fill out what is called -- they fill out what is called a retail buyer's order, which is an agreement of purchase with clients' information, the vehicle's information and the agreed selling price on the vehicle.

If the vehicle is a cash deal, it would indicate on the retail buyer's order that this vehicle is being sold to the client as a cash deal. And this is the remaining balance after he or she put down X amount of dollars.

If the vehicle is being purchased on an agreement of financing, they will fill out the retail buyer's order, again with the same clients' information, vehicle information, what is the selling price of the vehicle and what was the down payment that the client gave

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and what would be the remaining balance of the COD.

COD, by that, I mean if they put down $100 and they planning on putting down $3,000, the remaining balance is $2,900 due in U.S. currency or debit. It cannot be given in credit if they're financing -- if they're financing the vehicle because they cannot give a credit card for a down payment to a vehicle if they're financing in credit.

At that point, that person, when they sign a retail buyer's order, they're officially has become what's called a customer of the dealership. When they become a customer of the dealership, they proceed to get their auto insurance with -- showing proof of coverage, insurance card, binder. A binder is a document that indicates the coverage of the liabilities of insurance for the vehicle.

Q Everything you're describing so far, was that process being handled by

JULIO ESTRADA

a different company of New York Motor Group?

A Every employee -- every sales rep that introduced themselves to a customer -- excuse me, to a client, they walked on to the lot. In order for he or she to proceed and purchase cash or a finance vehicle, he or she has to fill out a retail buyer's order for which they get a copy of it, as well as a receipt before leaving the establishment and a copy of the Carfax.

Q So the salesperson completes the retail buyer's order and confirms the insurance information?

A At that point, they proceed to get coverage of insurance with the client. They put the client on the phone with their insurance company. And the insurance company, the sales rep tells the customer: Please inform your insurance company that you currently have not taken the vehicle. But in order for you to get into the finance office, you

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need proof of coverage as a stipulation of promise purchase -- intention of purchase, excuse me.

Q At what point of the process would the salesperson bring the customer to your office?

A After completing the retail buyer's order and getting the proof of insurance and completing all the other information that I initially stated, at that point, they go and meet -- at that time, they meet -- they're done with the sales rep.

Then they bring me the file. They bring me a file. And right before they come to see me, I submit the application, if it's a finance deal. I submit the application to the bank.

Q Would the salesperson bring people to you even if they weren't going to finance the deal?

A If they were doing a cash deal, no. They would first go over the -- they would first go over the deal

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with Ms. Nada or Mr. Eltouby. And in respect to the deals -- 'cause I was only dealing with clients that were purchasing cash -- I mean, finance deals, sir.

Any customer that I saw that ended up purchasing a vehicle in a cash deal, it was 'cause they asked me to bill out the deal for them which means print out the documents in respect to that said deal.

Q Do you know who made advertising decisions?

A Absolutely.

Q Who was responsible for managing the advertising of vehicles?

A The advertising of the vehicles, a gentleman that was in charge of that was Mohammed. His original name, I do not know him. Obviously, in the automobile industry, he has an alias. His alias was Little Mohammed.

Q You said obviously in the automobile industry, he has an alias. Why is that obvious?

JULIO ESTRADA

A Oh, in the automobile industry, the reason that everyone usually has an alias is in respect to that is 'cause a lot of situations occur from it, whether you help out a customer or get involved, once you're involved with a dealership, usually, a client in this day and age, they go online, and they put your information online as being part of the problem, even though it may not be the case. So everyone uses an alias for that reason.

Q So when Mr. Eltouby hired you, did he know that your legal name was Julio Estrada?

A No, sir.

Q He did not?

A No.

Q What did he know your name as?

A J.

Q You introduced yourself to him as J Torres?

A Everybody in the automobile

JULIO ESTRADA

industry knows me as J Torres.

Q So when you completed that IRS W-9 form that we talked about before --

A I know exactly which form it is you mentioned.

Q -- did you complete it as J Torres?

A I never completed it because in my corporation, it says my name as Julio Estrada. He asked me for the seal. And everything in respect to my corporation when I was about to complete it, he never even took it because I asked for copies of it. And I never even completed it. I never gave him my Social Security. I never did any of that.

Q Did you put your legal name, Julio Estrada, on any documents when you applied?

A No, sir. I was paid cash, sir.

Q I understand.

But you had said that you

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had started to write out documents. And all you put on that IRS form was the name of your company?

A At that point, all I had put was my address and the name of the corporation.

Q Where was your corporation based?

A Delaware.

Q So you had filed necessary corporate documents with the State of Delaware?

A Yes, sir.

Q And you were an incorporated business?

A Yes, sir.

Q Did Mr. Eltouby do any kind of training with you?

A Training?

Q Right.

Did he train you in any way before you started financing at New York Motor Group?

A What Mr. Eltouby --

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Mr. Toby, what he went over with me, his rules and regulations in respect to his company and what tasks is it that he expects me to perform and how it is that he wants every customer to be delivered and which copies of all the documents he wants the customers to get, et cetera, et cetera. That's it.

Just basically telling me the rules and regulations in respect to his clients 'cause he was obviously -- did not want to lose any banking institutions 'cause any little hiccup could cost you a banking institution. He did not want to risk that.

Q When did that conversation take place?

A When we were sitting in his office going over the pay and when that document was in front of me in respect to the corporation and when we were waiting -- there was nobody -- there was no one in the trailer because we had no phones, we had no Internet.

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Q This was November 2012?

A Yeah. It was just him and I.

Q So the day that he was hiring you?

A The day that we were going to close out me working for him.

Q Did you have any involvement in advertising the cars?

A No, sir.

Q Only Mohammed made those decisions?

A Little Mohammed as per the description and the -- the description and authorization of obviously Mr. Toby. The person who did the advertising was Little Mohammed.

Q Did Toby give you any authority to change the price of the vehicle after it was advertised?

A The advertised price of the vehicle is the vehicle -- the selling price of the -- is the advertised price. It's not the selling price of the vehicle, not just in Mr. Toby's dealership, in any dealership.

In any dealership, not just that I have worked in, not just in Auto Palace, that's just -- Major World, et cetera -- that's not the selling price of the vehicle. The selling price of the vehicle is determined -- if it's a financed vehicle -- once he or she leaves the finance office, that they leave with a copy of the retail buyer's order and they leave with a copy of the contract which is usually a Chase contract or a Law 553 contract.

The reason there's different contracts is 'cause banking is different, depending on the banking institution, depends on which -- which contracts are accepted by the banking institution. Banking institutions has different regulations as to which contract is accepted before they front on any deal.

Q When you say "Law 553 contract," you mean the New York State form of a retail installment sales contract?

A Yes, sir.

Q So then it was your understanding that the price of a vehicle could change from the advertised price?

A The advertised price, if they were buying the car cash, it was the advertised price or whatever vehicle was -- whatever price was agreed upon with management -- with management or the client.

Any client that walked into my office, finance office, which is the financial financing office, what I would do is I would pull out -- I would what's called gut out the folder. I would pull out their driver's license. I would pull out their retail buyer's order. I would confirm the client's signature, that he or she has agreed to purchase said vehicle for how much are they purchasing it for and how much money they're putting down before I would go over their options

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with them of any retail -- any aftermarket product.

Q You just described -- if I understand correctly -- the first steps you took once the salesperson brought the client into your office?

A Client after, of course, confirming identity. The first thing is to confirm the identity.

Q Could you just walk me through that again? Because I want to make sure I have a clear understanding from the beginning of a customer being brought into your office.

A So a customer is brought into my office. At that point, I greet the customer. I explain to them, to the customer, Mr. Customer, just so that you are aware, let's say Ms. Thomas, Mr. Smith, whomever it may be, just so that you're aware, before I discuss anything with you, I must inform you that everything in this office is currently being recorded.

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Q Did Mr. Eltouby tell you that you were supposed to tell people that everything was being recorded?

A That I had to inform them?

Q Right.

A Was that -- Mr. Toby, did he tell me? He told me: Any customer that walks in there, please let them know that everything in that office is being recorded; plus, there was a sign on the door that said everything beyond this point will be recorded by audio and video. It was a little display on the right-hand side.

Q Go ahead.

A Then he told me that -- then I would go -- I would tell the customer that. And some customers would say, Good, great. Some customers had jokes about it. Moving forward, we would just -- I would sit down with them. I would ask them -- I would explain to them that I have a copy of their license. But if they don't mind if I could get a --

can I please see your original driver's license? And they will tell me: Do you have copies of it? I would tell them, No, I just need to confirm your identity, so it's for your best interest and the best interest of the lending institutions.

And then they would give me the driver's license. I would check the driver's license in front of me. I would confirm the identity of the customer. And I would tell them that I'm just gonna leave it here. I'm gonna leave it here on my right-hand side until we're done with this procedure and that I'll be sure to give it back to you.

The reason I did that 'cause when it was time to sign documents, whenever it came around to the part of signing any documents, I would tell them that I would need them to sign in the same fashion that they signed their driver's license for security reasons.

Then at that point, I would

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go over -- first thing I would go over with them, if they went over the Carfax, they would say yes or no. Then I would ask them if they test drove the car, if they test drove the vehicle. Some would say yes; some would say no. The ones that would say no, I would tell them: Unfortunately, if you haven't driven the car, I cannot go over not even your options with you until you drive the car, the reason being so that there is no -- any other problems that may occur in the future. I could have a disclose with you and I could give it to you in a document that we have in each file, which is called a wheel, stating what is owed or promised to you by this establishment. So in realty, Mr. Customer, it's to protect you and to protect the best interests of the dealership and obviously the banking institution.

At that point, we would proceed on the ones that already had test driven the cars. Once they test drove

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the cars, we would go over everything with them. I would go over everything with them. And then I would go over their credit report with them and ask them security questions in respect to their credit.

Q Had somebody already given you their down payment on the car at this point?

A The down payment was attached to the folder, sir, in the back, stapled.

Q So when it came to you, they had already made a down payment?

A Oh, they would not be able to make it into my office without the down payment or the COD.

Q But you were the person who ran their credit?

A No, sir. The person that ran their credit was the manager at the dealership.

Q Who was the manager?

A Throughout that time span

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that I was employed at that establishment, sir, they had over six managers in that short time, sir.

Q Was this the sales manager?

A That is correct, sir, yes.

Q It was Angel Santiago?

A Angel Santiago was a manager there for less than two weeks. And then after I was there, Angel left to Planet Motor Cars. Angel was not a manager there after that. He left to Planet Motor Cars. After Angel came Danny.

Q What was Danny's last name?

A Del Valle. After Danny, would you like to know --

Q Yes, I would like, please. Go.

A After Danny was another manager named Ray. I don't know his name. Again, that was his alias, I'm sure. The manager that followed him was Mohammed.

Q Is that Little Mohammed?

A No. Little Mohammed was

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never in management. Then after that Mohammed came another Mohammed. These individuals used to report -- the person that was in charge of those managers was the young lady by the name of Nada Eltouby.

Q Nada supervised those managers?

A Yeah. All those managers reported to Nada. The only one that didn't report to Nada was me. I reported to Mr. Eltouby.

Q So the credit check was run by the manager, the sales manager?

A Yes, sir.

Q So by the time you get a file, there's already been a credit check, and there's already --

A -- a completed retail buyer's order.

Q -- and a down payment has already --

A A down payment, a proof of insurance, a Carfax has been given to a

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client. We have a copy of the driver's license. And we have proof of residence and proof of income. That's by the time I get a file. This is all the documents that are in that file by the time they come into my hands.

Q Once you have all that information and you've reviewed credit report information with a customer, then what do you do?

A I proceed to -- before the client comes in my office, their credit information is in the computer, the computer database. They don't print out the credit report for security reasons.

At that point, by the time I get the file with all the information that I just stated that's in it, I proceed to submit the client's information with the criteria of the vehicle that's being purchased to a banking institution in respect to what are the customer's, client's credit or the conditions of the vehicle.

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By that conditions, I mean mileage. Some banking institution do not finance vehicles with excess mileage over 100K or a framed damage vehicle, et cetera, et cetera, things like that. It all depends, the criteria of the vehicle and the criteria of the client's credit.

MR. SIMON: Can we go off the record for a second?

(A discussion was held off the record.)

Q We'll take a break in a little bit. I just want to make sure I understand the overall process in your office.

Would you choose the finance institution?

A No, sir. With my years of experience in respect to that, there is -- an application that is used for -- in the automobile industry that's called Dealertrack. At that point, you fill out the application online with Dealertrack. And you, in accordance to your years of

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experience, you select which is the bank that's going to offer the client the best -- the best rates, the best terms in respect to the year of the vehicle, year, make, models of the vehicle and obviously the customer's credit.

The reason I mention year, make, models is because there's also some banking institutions that don't buy said vehicles. So you have to know these things before making a decision because at that point, they now have an additional inquiry on their credit which obviously affects their credit.

Q So would you enter the information into Dealertrack?

A Yes, sir.

Q When I say "you enter it into Dealertrack," am I correct Dealertrack provides software to an auto dealership; you have it loaded on a computer?

A Yes, sir. You log on to Dealertrack. You put in your password,

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your ID, and you submit -- you proceed to submit the application. It tells you the name of the available lenders and in accordance to the information you originally have filled in, and it tells you available lenders to this certain client. And you're able to submit if you decide to move forward.

Q If you entered in information about a customer and you got back a list of available dealers, you would only get a list of available lenders that had ongoing contracts with your dealership?

A To answer your question, that is correct. You're only able to submit applications to banking institutions that you are currently signed or eligible to currently do business with.

Q And at the point that you got that list of available lenders, an actual credit application had not gone through?

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A No, sir. It has not been submitted at that time.

Q If you are working as the finance representative, you would make the independent decision as to which lender you were going to send an application to?

A No. In accordance to the -- when you load an application in Dealertrack, it tells you -- Dealertrack is already informed of said customer. That customer's credit on criteria, because you already ran their credit report, you already ran their credit.

So when you run their credit, it already shows. Let's say the customer has a 700 credit score. It shows -- it's already in the computer that the customer has a 700 credit score, the 700 credit score, what kind of vehicle they're purchasing, what is the loan-to-value you're looking to borrow from the banking institution.

At that point, it tells you

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who you should or you shouldn't submit it to. Obviously, there's going to be some banks that's going to tell you, you should or shouldn't submit it to.

But that's up to you to make an individual decision, the reason being is 'cause why am I going to submit a customer with an 800 credit score to a banking institution, let's just say like Westlake, which deals with customers that have subprime credit in some cases.

Q When you say you would make the decision, you meant that you working as the finance representative would make the decision about which lender to send an application to?

A Yeah, yes, sir.

Q Once you've sent in an application, what happens?

A It goes into -- first says transmitting. Then it goes into pending status. And then it tells you if it's been declined, approved or -- approved, declined or you've been given a counteroffer.

Q And all of that information was provided back to you through the Dealertrack track interface?

A All that information is available to me, he or she who has access to log into Dealertrack and has permission -- like, for instance, the owner is able to see who they're approved through. I'm able to see. The sales rep, I'm not able to see. The sales managers, I'm not able to see. You have to have access to Dealertrack.

Q And you had access to it?

A I had access to it to submit for review applications.

Q Before you submitted that information, would a customer have reviewed and signed a loan application?

A Yes, of course. He or she would have to fill out a credit application.

Q Would they do that in your office?

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A No, sir. That is part of the file that comes attached to the file when the file comes with the driver's license and with the -- documents that I had mentioned earlier.

Q Did you enter that information into Dealertrack?

A Yes, sir.

Q So you would get a loan application?

A Signed by the customer, stating that he or she allows me to submit their application to as many banks as they desire, as long as it's to obtain them a loan through a banking institution that we are currently signed up with at our dealership and that all the information that he or she wrote down in that application is accurate, to the best of their knowledge, and they have not misled that application in any way, shape or form.

Q When you got back information about whether the loan would

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be approved or whether there was a counteroffer for the loan, would you then share it with the customer?

A At that point, when I get the information, I don't share that information with the customer, nor anyone at the dealership until the customer is in my office and I have confirmed all the stipulations that are required in order for me to obtain financing for that customer.

So before I proceed to give any customer any options in respect to the lending institutions that are available to them, I first obtain the documents, which is called the stipulations on the deal, before I go over anything with the client.

When I do have the stipulations in front of me and the client is in front of me before I present to them any loan that he or she may be approved for, I give them all the options as to how many banks I submitted the

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application to and which banking institution approved them or declined them or even gave them a counteroffer.

If you're approved through a lending institution, you would get a letter from the lending institution that you were approved through them.

If you were declined through a lending institution, you would also get a letter. You will always get a letter. The customer will always get informed by the lending institution to inform them, just in case he or she wants to dispute as to how you got my information and I did not apply for any loan. The banking institutions do that, so that the clients could be aware that someone has their information, was applying for a loan.

Q What would happen if you presented that information back to the customer and they learned that the loan was going to be more expensive than they wanted it to be? Would that happen?

A Yes, of course.

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Q If a customer at that point said they just didn't want to go through with this deal, could they stop the deal at that point?

A Yes, sir.

Q Would they get a refund of their deposit?

A If it was done on a credit card -- I mean, if it was done on a debit card, they would have to bring back the original debit card. And they would have to bring back the original debit card. And the money will be refunded back to their debit card.

If it was done cash, he or she would get a check from the company, even if they gave a down payment in cash, so that that way, the company could have a paper trail, showing that they gave the said customer their money back.

Q What if they had come with a banker's check?

A Certified funds?

Q Certified funds.

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A If they had come with certified funds and they gave us a check, at that point, we would still give them a check back from the -- not "we," excuse me. If they gave us a certified funds, official check, let's say from TD bank, Chase Bank, that check would be in the safe. We would not have access to that 'cause more than likely, Nada doesn't -- Nada didn't have access to the safe.

So they would cut them out a check from the dealership's bank, a check. They would cut them out a check and give them back their refund.

Q But if I just showed up that day with my $7,000 certified check, before I even went into your office, if I were a customer, that check would have gone into a safe?

A If you gave -- if you gave -- showed up with a certified check, if you showed up with a certified check, at that point, if you were going into financing and you were going into the

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finance office, at that point, Nada would keep it in her draw. Nada would keep it in her draw, which is locked and secured, away from any sales reps, anyone in management, away from J Torres or away from anyone, away from myself, obviously. And at that point, she will hold on to it until the customer will decide if he or she was going to sign for the deal.

Q Again, so it wasn't in a safe?

A No. It depend on sometimes -- on different occasions -- yeah. It would vary; in other words, because some clients would say, listen, do not put my money in a safe or anything like that because I'm not certain I'm going to move forward with this deal.

But before anything, Nada would ask them as well: Did you test drive the car? If they had any concerns in respect to the vehicle because she would check with the manager. The manager would check with the client. And

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if they had any concerns or any questions in respect to that, they obviously would not -- they would not deposit they check. They would hold on to it.

And if let's just say they wouldn't sign in the finance office, which was very, very little, the time that they wouldn't sign, if there were ten clients, only probably one would not sign. If they did not deposit the check, they give the check back to the customer.

Q If they had not deposited the check into the safe?

A Correct.

Q So who would open the safe to put the checks in there if Nada didn't have access to it?

A The only person who had access to the safe was Mr. Eltouby.

Q So the checks would stay in a locked draw in Nada's desk until Toby could put them into the safe?

A Yes, sir. In a bag, they had a lock.

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Q If I were a customer and I said to you, wow, this loan sounds bad, I can't afford that, I just don't want this deal anymore, if that check was not in the safe, I could have just gotten it back?

A No. If it was not in the safe, you would -- it would be explained 'cause before I signed up -- before I signed and went over anything with any customer, I would have not just confirmed the identity. I would confirm that he or she read the retail buyer's order, stating that he or she decided to move forward in purchasing this vehicle. And I would confirm that first with them. And once -- I will confirm.

So you're buying this vehicle for X amount of dollars and you signed this; this is your signature here? Yes. Okay. And you gave a thousand dollars and you owe nine thousand dollars more? Yes. And they would confirm yes. Or I would leave that there, as well as their ID. And if he or she decided to tell me something like that, they not want to move forward with the loan, I would remind them: Do you remember that document that I had asked you: Did you sign? Which was in this case, Exhibit 1, that I had asked you if you signed this. Well, in this document it states that if you decide to cancel, you're aware that it states that you will be paid a 10 percent restocking cancellation fee. Correct, Mr. Customer? I would tell them that.

Q What was the restocking cancellation fee?

A Because at that point, when he or she signed a buyer's order, if -- let's just say if he came Monday to buy the car and they would not be able to come until Friday to pick up the car, that car was no longer available to sell to someone else because it was on hold for that client.

Q How much would they be

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charged for that?

A 10 percent of whatever the selling price was, the original selling price without adding any aftermarket fees or anything.

Q Would the buyer's order have all of the information about the loan on it?

A The buyer's order?

Q Yes.

A No. What the buyer's order stated is that you have agreed to purchase this vehicle. That's what the buyer's order stated. And if I decided to cancel, if I mean -- me, being the customer, decided to cancel, I would be willing to sign, to pay a 10 percent cancellation fee; in other words, I went in to buy this vehicle from you guys and if I decide to cancel, as it says and it states clearly on your fine print that I read because keep in mind, I have an 800 credit score, a 700 credit score, whatever the case may be, and the finance

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manager asked me clearly if I have read this before I signed this and I told him yes, indicates that it's a 10 percent cancellation fee if he or she decides to cancel.

MR. LANE: I would like to take a break -- I think we all would -- and get back quick. And I'll carry on.

(A short recess was taken.)

Q Let me ask you.

You had said that part of what you would do when you were meeting with customers in your office was advise them of their options in regards to the loan?

A Yes, sir.

Q What do you mean by that? What were you referring to?

A By that, I mean, let's say I submitted your application to four banking institutions and one of them declined you, I would go over the other three that gave you an approval as to

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what were the rates, the terms and the finances that were available to you.

Q Did you ever offer people that they could come back and refinance with you?

A Did I offer people?

Q Did you offer to have people come back and refinance their loan with you?

A I refinanced numerous people at New York Motor Group. Initially, they got a higher rate. And after making a couple of payments, like six, eight payments, ten payments, they qualified for a lower rate.

I didn't tell them that they could do it specifically with me. I told them that that is something that is available to them which is the truth. You're available to finance any deal as long as you're not locked into the deal. And in the State of New York, there is no prepayment penalty.

Q You said you very often

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would help a customer refinance when they came back to the dealership a few months later?

A Have I had clients that came back and refinanced? Without a doubt. Numerous clients came back and refinanced. And we've refinanced their cars with them. And we got them lower rates. Sometimes the term will go up, obviously, would increase. Sometimes the term will decrease.

But it all depends on how much money initially he or she put down, you know, 'cause keep in mind, while all this is happening, there is a depreciation factor that's going into the vehicle cause you're putting excess mileage and wear and tear into it.

So when -- at time of evaluation when you refinancing it, you're refinancing what you're initially owed to the bank. That's what you owe to the bank. So now I'm trying to resell it to another bank with the same vehicle but

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with higher mileage, with higher mileage, which reduces the initial value of the vehicle.

But besides that, obviously, he or she had the option of paying off the car, paying off the car or refinancing it, 'cause like I mentioned initially, before, there is no prepayment penalty in the State of New York.

So you -- not only do you have the option of refinancing with an individual like myself or anyone that's in the automobile industry, you also have the option of going with your own lending institution.

Let's say you do business with a bank or a credit union and you believe they can offer you a better rate than you were initially given at this establishment called New York Motor Group, that is up to your discretion to select if you would like to exercise that option for yourself or for your family's best interest.

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Q You had said that before, you remember Boris Freire, the customer Boris Freire?

A Yes.

Q And his partner Miriam Osorio?

A No. That's not -- there are two different people, if I'm not mistaken.

Q They're two different people. They're a couple.

A I remember Mr. Boris. He financed with a bank called Santander, if I'm not mistaken.

Q He did file with Santander, that's correct.

Do you remember making arrangements for him to finance with Santander?

A Yes. I remember doing his deal vividly, sir.

Q So I've got some documents from his deal. I'd just like to show them to you and ask some questions about it.

A No problem.

MR. LANE: So the first one we're going to mark is Exhibit 2.

(The above-referred-to document was marked as Plaintiffs' Exhibit 2 for identification, as of this date.)

Q That's for you to take a look at. That's now marked as Exhibit 2.

MR. SIMON: I have no objection if you want to mark all your prior documents as a group, as an exhibit too.

MR. LANE: Let me just do it so we could go as quickly as possible.

Q Do you recognize this document?

A Yes.

Q What is this document?

A This is his -- his finance contract.

Q Do you recognize it as a

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finance contract that you prepared?

A Yes, sir.

Q It's been printed out on to four letter-sized pages. If I'm not mistaken, the first page would actually be page 1 and page 2 of the exhibit laid out, one below the other.

A Yes, sir.

Q At the bottom of the first page, which is page 2 of the exhibit, is that your signature next to sellers?

A That is my signature for when I was doing banking -- like with Santander with, let's say, M&T, I would just sign like with a J. So to answer your question, sir, in respect to this document, which is Exhibit 2, yes, sir.

Q So you signed it?

A Yes, sir. And the client, Mr. Boris, signed it in two different spots.

Q And this signature was a signature that you used only for Santander documents?

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A No, not necessarily. Sometimes I was supposed to use it for Santander. But most of the time, it was for Santander. But sometimes I would get caught up in so many deals that I would do that instead of signing like the other way, which was just with a J, I would vary back and forth.

Q Why would you have a specific signature for certain institutions?

A Out of habit. Oh, why?

Q Yes.

A 'Cause usually, like -- you see here in the bottom left-hand corner where it says "seller signs interest to -- contract to Santander"?

Q Yes.

A Sometimes that would be, let's just say if it wouldn't be there, because they didn't print it out or whatever the case may be, like to remind the controller of what banking institution, that and the binder as to

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what banking institution it was supposed to go to.

Q But it sounds like you had different signatures to use for different lending institutions?

A Mm-hmm.

Q And you're saying that your signature for an M&T loan would have been a different signature?

A It's like a J.

Q And why would it be a different signature?

A It was just like out of habit. It wasn't -- in other words, it wasn't protocol from the company, nor was I required. It was just -- it was just whatever I was -- whichever way I was signing it. But it wasn't required by the establishment that I was working for. It was not required.

Q What did you have to do to get access to Dealertrack; and to be specific, did you have to complete an application to get a password and log-in

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for Dealertrack?
A No, sir.
Q So how did you obtain access to Dealertrack?
A Toby gave me his log-in ID and the password.
Q So you used Toby's log-in ID?
A Yes, sir.
Q Did Toby ever ask you to complete an application for Dealertrack?
A No, sir. He gave me the ID and the password.
Q Let me get clear on something else.
On Exhibit 2, at the top, next to creditor seller's name in the top right corner, it says "Planet Motor Cars"; correct?
A Yes, sir.
Q With the address of 160-14 Hillside Avenue?
A Yes, sir.
Q This deal happened at New

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York Motor Group?

A Yes, sir.

Q So why would a New York Motor Group deal end up looking this way with Planet Motor Cars listed as the seller?

A 'Cause like I initially stated before, Planet Motor Cars -- Planet Motor Cars in Hillside Avenue is the mother head -- is the mother -- is the franchise of both dealerships.

In this case, if it says Planet Motor Cars, even though we were originally signed up with Santander to both -- throughout both dealerships, depending on the floor plan that the vehicle came from, let's just say it was bought under the floor plan of Planet Motor Cars, we would send it or submit it through the Dealertrack of Planet Motor Cars.

Q Could you explain the floor plan? What does that term mean?

A The floor plan is when Toby

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goes to the auction, you have an option of -- he has -- let's just say on the right, you have a floor plan of Planet Motor Cars; on the left, he has a floor plan with Planet Motor Group and he bought it through the floor plan of Planet Motor Cars, Planet Motor Cars in Queens, which means that under that floor plan, he used that account to purchase this said vehicle in hand that we're speaking of, which is the 2010 Honda Odyssey, last four of the VIN is 4438.

Q But why if he bought it under the Planet Motor Cars floor plan would he not have the car brought to Planet Motor Cars?

A 'Cause as a used car dealership, he reserves the right to be able to sell it through any of his lots, as long as he's licensed throughout the department of consumer affairs throughout the State of New York, sir.

Q If I understand correctly, he would use either floor plan

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interchangeably?

A Yes, sir. He would use either floor plan to purchase vehicles for either company: New York Motor Group or Planet Motor Cars.

Q Would he move cars --

A -- back and forth.

Q -- back and forth between the two lots?

A He would swap back and forth for either lot and then switch them and advertise them through Planet's Web site or New York Motor Group's Web site. Either-or.

Q Just taking a look at Exhibit 2, do you see the cash price for the vehicle listed and the itemization of amount financed?

A Yes, sir, I see this.

Q Can you tell what the cash price is?

A In the contract?

Q Yes.

A Yes, sir. In the contract,

the cash price that indicates -- where it says itemization in No. 1, in the Window 1, is the selling price of the vehicle, including aftermarket products, of $30,199.96.

Q So that's not just the selling price of the vehicle?

A No, sir. That includes the selling price of the vehicle, comes as one, which includes the selling price -- the sales price of the car, any aftermarket products that may be included in it that sums up -- you come up what is called a subtotal of that and that in the contract, when it's printed out in the contract, it shows it as one.

And on the left-hand side of that, it indicates how much tax he or she paid for that in the State of New Jersey in this case.

Q And on this same contract, if you look down in the itemization items in paragraph No. 4I under the other charges --

JULIO ESTRADA

A Mm-hmm.
Q -- is there a $3,000 charge there for a service contract?
A Yes, sir.
Q So do you have a sense of why, when you prepared this document, you would have listed the charge for the service contract individually but added other charges in a lump sum to the cash price?
A The subtotal in -- your question is: How does this separate for what it is that he purchased?
Q Right.
Why in this contract did you list the service contract charge of $3,000, separately from the cash price; and yet -- if I understand correctly -- you're acknowledging that the cash price here includes other aftermarket charges? So why would you have bothered to separate out one particular aftermarket charge?
A In this case, sir, it's

JULIO ESTRADA

required by the funding -- the funding institution, in this case, being Santander; in order for you to get funded on this loan, which means you get the proceeds that are due for on this loan, you have to itemize the warranty, the reason being because the warranty is a cancelable product.

So I have to indicate it in the contract that that is -- that they were charged $3,000 for that warranty in order for me to obtain the funding.

Q But then why not itemize the other aftermarket charges?

A Because that's not cancelable. It's not cancelable, nor is it required by the bank to get what is called the advance. The advance that was given on this particular deal from the banking institution was not for anything but that warranty.

So the only acknowledgment of any aftermarket product in this said deal is for that $3,000 in the eyes of

JULIO ESTRADA

the banking institution and the client that signed it right above and right underneath where it says do not sign unless this document has been printed before you read it.

Q Let me give you another document.

MR. LANE: This is Exhibit 3.

(The above-referred-to document was marked as Plaintiffs' Exhibit 3 for identification, as of this date.)

Q Can you take a look at that?

A Yes.

Q Do you recognize that document?

A Yes. But this document is incomplete, sir.

Q Why is it incomplete?

A 'Cause this has a -- this document, just so we're clear, on Exhibit 3 is a theft deterrent product protection package that he or she may have

JULIO ESTRADA

purchased, in this case, Mr. Boris, was sold this product.

But currently in my hands, I only have one part which is the front page. The rear part of this document is currently missing, sir.

Q That's fine. Thank you.

The additional terms of the agreement are missing from the second page?

A Yeah, where it states if you decide -- your cancellations or incomplete coverage is missing.

Q That's fine. I don't really have a question about that.

My question is about what is already showing on the front of this document. It lists the vehicle price.

A The vehicle purchase price.

Q Yes, vehicle purchase price. And it says $14,900; correct?

A That's correct. That was the selling price the customer had originally came into the dealership,

JULIO ESTRADA

buying the car for.

Q In this theft deterrent product protection, is this one of the aftermarket products that you would offer to people?

A Did I offer this to this client?

Q Yes.

Was it a standard to offer this to customers?

A Yes, sir.

Q And, again, you signed this document at the bottom; correct?

A Yes, sir, and so did Mr. Boris.

Q He did.

Do you have a sense of how much theft deterrent product protection would cost a customer?

A Yes, sir.

Q What would it cost a customer?

A It usually varies in accordance to the vehicle they purchase.

JULIO ESTRADA

Q Why would it vary?
A Why?
Q Yes.
Why?
A Well, it usually varies in respects to what it is that -- what type of vehicle that they're selling them, like in this case, he was being sold a Honda Odyssey. Considering that this product is to cover the -- not just the down payment that the customer put down, but to cover their vehicle.
In this case, it was an Odyssey. The price for a theft deterrent product of an Odyssey and one for, let's just say, a Corolla would not be the same. It would be different.
Q Is it possible that it would cost $15,000 for theft deterrent product protection?
A $15,000?
Q Yes. I'm just wondering.
A No.
Q Would it be more than

JULIO ESTRADA

$5,000?

A No. Sometimes it could be $3,500, $3,400, 28, 2738; depends.

Q When we looked at Exhibit 2, we noted that the cash price, including about $2,000 in taxes, came out to $30,000. But in Exhibit 3, it indicated the vehicle purchase price was $14,900. I'm wondering: Would you have a sense of what could account for the $15,000 increase in the price of the vehicle when you're already listing a $3,000 service contract separately?

A Yes, of course. There's a document that's supposed to be attached to whichever file it is that you may have which is called a retail buyer's order. It has the total breakdown of everything, showing that he or she started out purchasing this vehicle for $14,900. And then on top of that, they would charge $3,000.

Besides that, they will also charge a processing fee which is -- a

JULIO ESTRADA

processing fee plus the vehicle replacement policy fee. Those four fees would bring it up to -- costs including the taxes -- up to the $30,199.

Q So the buyer's order should have itemized everything?

A There is a buyer's order attached to every single vehicle. It has a breakdown that he or she signs next to it. It gives you a breakdown of how much they were purchasing the car for, plus the processing fee, plus the vehicle replacement processing, plus the extended warranty, and they sign next to each and every one of those.

MR. LANE: Can I get this marked as Exhibit 4?

(The above-referred-to document was marked as Plaintiffs' Exhibit 4 for identification, as of this date.)

Q Mr. Estrada, can you take a look at Exhibit 4?

A (Witness complied.)

JULIO ESTRADA

Q Is Exhibit 4 a purchase order?

A No, sir. Exhibit 4 is a bill of sale, sir.

Q What's the difference between a bill of sale and a purchase order?

A A purchase order is the same identical form you initially sign when you first met the sales rep on the lot that says what is the price that you were purchasing the vehicle for and any additional fees that may go attached to it.

That retail buyer's form -- retail buyer's order is superseded by this document, which is Exhibit 4, that I'm currently holding. It's superseded by this document as the new selling price of the vehicle, including aftermarket product, where it indicates in the bottom of how much it is you're going to finance, at what rate, what's the term and your new total selling price with

JULIO ESTRADA

your new fees or adjusted, superseding the retail buyer's order.

Q Let me show you one other document: Mr. Freire's transaction.

Before I show you this: Do you remember speaking to Mr. Freire after you sold him the car?

A Numerous times, sir.

Q Do you recall that he came back to attempt to refinance the vehicle with you?

A No, sir. Initially before coming back to refinance the vehicle, after taking the vehicle and financing it through Santander, he came back and he was given -- he came back as a courtesy because he had problems with the car, and we gave -- not we. Toby gave him an alarm, a remote starter alarm, and they put a TV in his vehicle. And the first TV they put was too small. And he wanted a bigger TV. Considering it was a courtesy being offered to him, we explained to him that obviously, this is

JULIO ESTRADA

the one that we usually give.

And then he said, well -- that obviously -- after me -- me not being happy of coming back and forth to New Jersey, what's the best you could do. And then Toby told him I want you to -- I want you to see that I don't owe you anything. And he showed him the wheel form, showing him that the dealership didn't owe him anything. And he said, Please keep in mind I didn't make a lot of money on your deal but Imma still give you the bigger TV. He gave him the bigger TV. That's the time he came back, the first time.

Q You don't remember ever him coming back to refinance the vehicle?

A A hundred percent, yes, he did, sir.

Q Do you remember what happened?

A Yes, sir. He came back to refinance the vehicle. And if I'm not mistaken, he was gonna -- he came back to refinance. And we were -- we were proceeding to refinance his vehicle. And if I'm not mistaken, he had brought back some money. He brought $2,000, something like that, $700. I don't remember exactly the amount it was. But I know he came back with money. Nada receipted the money. And we proceeded to submit his application to the bank.

Q And do you remember if it was a successful application?

A It was pending. At that time, he came back two or three times, sir. And he -- he got frustrated with the procedure. He got frustrated with the procedure. And then -- then -- oh.

Then he said he was gonna call his attorney. And then he faxed us a paper with his information and the client's name, Simon, at that time. At that time, it was him and Mr. Simon that had retained counsel. That was the last time I heard from Mr. Boris.

Q But he did hand over money

JULIO ESTRADA

for the refinancing?

A Yes, he did.

Q Why would he have had to hand over more cash for the refinancing?

A Because his vehicle that he had purchased, he had put a lot of mileage on it. He had put a lot of mileage on it. So he was just interested in getting a much lower rate.

And he didn't care, even if he had to put down -- as to what he stated at the time, he didn't care even if I have to put down more, I will put down more money. I just need a lower rate so I could be able to continue to afford this because now I am currently getting into other things with his wife, he had said.

Q When any cash was put down for refinancing, was it treated the same way as a down payment for the purchase of the vehicle?

A No, sir. It was just treated that he put down a down payment,

JULIO ESTRADA

that it was gonna be -- if he would have got refinancing, his new contract would indicate how much money he had put down. We got a receipt for his money.

Q Who would have taken the money once it was handed over to him?

A It was handed over to me, then it was handed over to Nada. Nada receives the money because Nada and Toby are always watching through the camera.

Q As you remember on the day that Mr. Freire was there to refinance, he gave you money, and you gave it to Nada?

A Yes, sir. I gave it to Nada in the presence of Mr. Boris.

Q We talked before about refunding money for down payments.

Who would handle the refund at New York Motor Group?

A Nada at the discretion of Mr. Toby. By that, I mean that before she did anything, she first had to check with Mr. Eltouby.

JULIO ESTRADA

Q Would you ever give somebody a refund?

A I never had access, nor the power to commit such an act. Of taking the money? Absolutely.

Q Of giving money back to a customer?

A No, sir. I never had access, nor the power, nor the authority to commit such a task.

Q Do you remember Nasrin Chowdhury and her son Shahad Kazi?

A They had purchased a vehicle. The mother did.

Q She had a Nissan Murano.

A Yeah. If I'm not mistaken, she bought a Murano. And she had came to refinance the car. And she had -- she had put down -- I think it was $7,000, something like that, to refinance the car, if I'm not mistaken. I know it was a large amount.

Long story short: Nothing was -- we weren't able to help them out

JULIO ESTRADA

'cause once we got the approval for them, the rate that they wanted was still not -- wasn't lowered enough. And they wanted the money. And the son came one day. He called me on numerous -- numerous names to say the least. And I refunded the money back to -- I gave the son some money cash. I don't remember the exact amount it was. I gave it to the son to give back to the mother, after confirming with the mother if it was okay to give to him.

Q But you had just said before that you would never handle refunding money.

A In respect to checks, sir.

Q So if I show you these money orders, let's take a look here. These were previously marked as Exhibit 9, I believe, at the deposition of Nada Eltouby-Smith.

MR. LANE: I suppose we need to remark them as Exhibit 5.

(The above-referred-to

JULIO ESTRADA

document was marked as Plaintiffs' Exhibit 5 for identification, as of this date.)

MR. LANE: These were previously marked Plaintiffs' Exhibit 9 and Plaintiffs' Exhibit 10 and Plaintiffs' Exhibit 11 at the deposition of Nada Eltouby-Smith. I've marked them all Plaintiffs' 5 for Mr. Estrada.

Q Just take a look at those, Mr. Estrada.

A I know exactly what those are.

Q What are those?

A Those are money orders that were given to the client from me with my handwriting and everything on it.

Q So you did sign these money orders?

A Absolutely. The reason I did that is to make sure -- considering that I had no access, like I initially stated, to cut any checks or anything

JULIO ESTRADA

like that and to have a paper trail that I refunded back money to customers, that was not my responsibility to do.

I still did that from my behalf. I went into a check-cashing place and purchased money orders and gave it to the customer because I currently was on -- I currently had pending cases in court.

So I wanted to make sure that I had a paper trail that I gave the client back their money. And I gave them those money orders. And I also made copies.

Q So those money orders weren't drawn on New York Motor Group funds?

A No, sir. They're signed by me. I purchased those money orders with my money out of my pocket.

MR. LANE: Off the record.

(A short recess was taken.)

Q I'm going to show you a couple of other documents that just

JULIO ESTRADA

happen to be from Mr. Freire's transaction.

MR. LANE: Can you mark this as Exhibit 6?

(The above-referred-to document was marked as Plaintiffs' Exhibit 6 for identification, as of this date.)

Q Mr. Estrada, you can take a look at that.

A I've never seen these documents.

Q You don't recognize those at all?

A Absolutely not, nor are they my handwriting. I've never seen these documents ever. I've never seen these documents ever, nor are they my handwriting. And I just noticed something that it says credit karma. Neither one of these establishments, did they sell anything, any product called credit karma.

Q I think what I'd like to do

JULIO ESTRADA

is get an example of your handwriting. So I'm just going to say a statement and just ask you to take dictation and write it out.

A No problem, sir.

Q Could you just write out, "Today is Monday, March 30th, it is cloudy, but it's getting warmer, but it is getting warmer"?

A (Witness complied.)

MR. LANE: Can we mark that as Plaintiffs' Exhibit 7?

(The above-referred-to document was marked as Plaintiffs' Exhibit 7 for identification, as of this date.)

Q Sign it and date it today.

A (Witness complied.)

Q Up here at the top, if I could just have you write a few more things. I'm just going to ask you to write a series of numbers. So could you write 8,384?

A (Witness complied.)

JULIO ESTRADA

Q Could you write the number $12,160.13?

A (Witness complied.)

Q And then finally, if I could just get you to write out the number 2,496.48.

A (Witness complied.)

Q I'm so sorry. I wanted you to write out the numerals, not the words.

A It's right there. 8,384. No problem.

Q Like if you could, just so we have space, either there or wherever (pointing), probably there where there's more space. So just write out those numbers.

A (Witness complied.)

Q I'm going to show you another document, just so that I understand. This is a document that was previously used in the deposition of Nada Eltouby Smith. And it was marked Plaintiffs' Exhibit 6.

MR. LANE: We're just going

to mark it Plaintiffs' Exhibit 8 for today.

(The above-referred-to document was marked as Plaintiffs' Exhibit 8 for identification, as of this date.)

Q I just want to know: Is that your signature next to the line authorized -- I'm sorry -- authorized signature on Exhibit 8?

A Yes, sir.

Q And you signed this as John DeSantos?

A Yes, sir.

Q And that's different from the signature we saw earlier that you used on a Santander document? If we go back to Exhibit 2, those are different signatures?

A Yes, it is.

Q That is another way that you would sign documents; what we see on Exhibit 8 is an alternative signature that you would use?

JULIO ESTRADA

A It's the same signature, as well as the one on the Exhibit 6 --
Q 2.
A -- excuse me, Exhibit 2, that the money orders that you provided copies of, sir.
Q Exhibit 2 and the money orders look like the same signature; yes?
A Yeah. Both of them, sir. If you notice on the money order, it has both signatures.
Q What I'm asking is: Why would you sign documents with different-looking signatures?
A Because I didn't have -- it was not required for me to sign any certain way at that establishment, sir.
Q But you would obviously sign documents, using different signatures?
A Have I?
Q Yes.
A Yes.
Q Let me just show you this document.

JULIO ESTRADA

MR. LANE: Can we mark this as Exhibit 9?

(The above-referred-to document was marked as Plaintiffs' Exhibit 9 for identification, as of this date.)

Q Again, just take a look at Exhibit 9. Do you recognize that document?

A Absolutely, sir.

Q Did you fill out anything on that document?

A I filled out that document as well and signed it, and the client signed it.

Q Let me just back up and go finish up with some of the questions I had for really right when we started.

Let me just ask you: Are you in the process of being sentenced for a conviction right now?

A (No response given.)

Q Are you in the process of being sentenced for a criminal conviction

JULIO ESTRADA

right now?

A Right now? I was already sentenced, sir.

Q You were already sentenced?

A Yes.

Q But are you awaiting sentencing on any other cases?

A Currently, right now?

Q Yes.

A Yeah. I have a couple of other cases.

Q You had indicated that you were arrested in June 2012?

A Yes, sir.

Q Were you convicted following that arrest?

A Yes, sir.

Q And then after that conviction, were you arrested again?

A Yes, sir.

Q Since June 2012, how many times have you been arrested?

A Two times.

Q When was that?

JULIO ESTRADA

A In 2014. If I'm not mistaken, it was in May -- excuse me. In 2014, I believe it was in February, sir. I'm not certain. I don't remember.

Q What were you charged with in your February 2014 arrest?

A Attempt to defraud.

Q Was that related to New York Motor Group customers?

A Yes, sir.

Q Were you arrested again after that?

A No. I was -- the charges were brought against me. So they gave me new -- after that arrest, I was charged with numerous other charges of clients because -- you want me to explain it to you?

Q I do.

A What happens is if a client -- if a client goes to a dealership, in search of a dealership, and to press charges against them or anything like that, considering it's a

JULIO ESTRADA

corporation and it's closed and they're gone, they obviously go after the individual that they last had any transactions with, in that case being me. Everyone else obviously is gone.

Q Have you been incarcerated since your last arrest in February 2014?

A I've been incarcerated since last year, sir, in September 2014.

Q So then following your arrest in February 2014, was there another arrest?

A No. I've been in jail.

Q That's what I'm trying to understand.

A I'm sorry, no. I've been incarcerated. Numerous other charges have been brought against me.

Q While you've been in jail?

A Yes, of course.

Q These are on separate docket numbers?

A Yes, I had separate docket numbers. And numerous charges were

JULIO ESTRADA

dismissed. There were turn into civil matters like this. Remember that you recall James and asking if he represent me. A lot of those cases would turn into civil matters because I was an employee of an establishment for New York Motor Group.

MR. SIMON: Peter, I'm just going to suggest there may be miscommunication. You're saying have you been arrested. Maybe it's: Have you been arraigned on new charges? He's already incarcerated.

MR. LANE: That's why I was asking about the docket numbers, just so I understand.

Q Let's back up.

I appreciate you're talking about this. I just want to make sure I understand the full picture. Let me ask you. You were indicted for your 2012 arrest in Queens County back in December 2012; is that correct?

A If I'm not mistaken, that's

JULIO ESTRADA

correct.

Q And that arrest in that case was related to crimes you were accused of while working for Auto Palace; correct?

A New York Motor Group. The cases with Auto Palace, I already had taken a plea on those cases, sir. I was already sentenced on those cases.

Q You know what, I don't really need to ask any questions about this anymore. Thank you. I think I got all the information I need on that.

A You're welcome.

Q I know that you worked at New York Motor Group. You also said that you worked at Auto Palace before you worked at New York Motor Group. I don't need to go back all the way to the time you left high school. But before Auto Palace, where were you working?

A KG Suzuki.

Q How long were you at KG Suzuki?

A Seven years.

JULIO ESTRADA

Q What did you do at KG Suzuki?

A I was a finance manager. Zero arrests, zero allegations of refinancing on numerous civil matters against the establishment, had no implications or any criminal behavior with anything with KG Suzuki for seven years, zero problems.

Q Who was your supervisor at KG Suzuki?

A Kinney Galani.

Q When you were at KG Suzuki, did you work for Sayfur Rahman?

A Yes.

Q What was your relationship with Sayfur Rahman?

MR. BRENER: He was also known as Imran Kahn.

Q So you knew Mr. Sayfur very well?

A Yes.

Q What was your relationship with Mr. Rahman?

JULIO ESTRADA

A At one time, I was a coworker of Mr. Rahman. And after his departure of the company before he came back, we were close friends. I've known him for over ten years, sir, for over a decade.

Q Were you working there before Mr. Rahman began working at KG Suzuki?

A I was working with Rahman at KG Suzuki.

Q When you started working at KG Suzuki, was he already working there?

A Yes, he was already there.

Q Did he ever train you in relationship to auto financing?

A No, sir. The person that trained me was Kinney Galani.

Q Where did you work before KG Suzuki?

A In the automobile industry?

Q Yes.

Any other dealerships besides KG Suzuki that you've worked at?

JULIO ESTRADA

A Any other dealerships? No. I was in KG Suzuki when I started.

Q Was that the first auto dealership you ever worked at?

A Yes, sir; as in management, yes. When I first started in the automobile industry, it was the Year 2000, sir. I started off as a porter at a dealership called Toyota of the Bronx.

Q How long were you there?

A I was there for four years.

Q Where did you go after that? So then 2004, where did you go to?

A I went to -- then I went to KG Suzuki. Then I started working at KG Suzuki.

Q You said you were at KG Suzuki seven years?

A Seven years.

Q So when did you start at Auto Palace?

A Right after KG Suzuki.

Q Around 2009?

A Yeah. I was working in KG

JULIO ESTRADA

Suzuki and Danny, while I was working in KG Suzuki, was sending -- at that time, Angel was at Danny's place. And he was sending Angel to come and recruit me from Kinney's place.

Q Danny recruited you from KG Suzuki?

A Yeah. He used to send Angel.

Q And Toby recruited you from Auto Palace?

A Yeah. And at that time, Angel was working with Toby.

MR. LANE: I think for the moment, I don't have other questions. But I reserve the right to ask more for follow-up.

EXAMINATION BY

MS. LINDERMAYER:

Q Hi, Mr. Estrada.

A How are you? Good afternoon.

Q How's it going?

A Good. Thank you.

JULIO ESTRADA

Q As mentioned before, I represent Shahadat Tuhin. I just want to start -- just follow-up on a couple of things that already came up when Mr. Lane was talking to you.

You had knew a lot about the recordings at New York Motor Group. Do you know like how long a recording would be saved for?

A If I'm not mistaken, it's up to 36 -- three days. Max is three days. But it stays in the hard drive of the tower, if I'm not mistaken.

Q So even after three days, it will still be in the hard drive?

A Absolutely.

Q Were they ever erased from the hard drive?

A No one has access to that. No one has the capability -- at least I know for a fact, nobody has the capability to erase anything from the hard drive.

Q What was the name of the

JULIO ESTRADA

receptionist at New York Motor Group while you were working there?

A I don't know. I know -- I'm sorry. There was a young lady. She had black hair. I never -- I don't mean no disrespect. I know she was there.

When you walk in, she was right there in front of us. But I would -- good morning to everyone, just keep walking into the office.

Q Was Nada a receptionist?

A No. Nada is the owner -- Nada is the daughter of the owner.

Q What was her position?

A Controller. She used to supervise the managers and every now and then would try to supervise me.

Q When Mr. Eltouby wasn't around, who was in charge of the dealership, putting you aside, as far as not in charge of you but just in charge of whatever else was going on at the dealership?

A Nada. Everything had to go

JULIO ESTRADA

through Nada.

Q So did the sales managers need her permission to do deals?

A The sales managers, they will work at their own discretion. But everything was supervised by Nada. At the end of the day, you couldn't proceed with any deal unless it was authorized by -- if it was okayed by Nada because obviously on some cases, on a deal-by-deal case, she would still check with Mr. Toby before anything.

Q As far as you know, would she check with him for every deal or only sometimes?

A No. Nada would check with him with every single deal; every single deal with the exception of none; everyone.

Q Did she ever make other sorts of decisions on her own about how to run the dealership when her father wasn't there?

A She would attempt. But it

JULIO ESTRADA

would be a matter of like 33 seconds before she would have to change her mind or her father would put her back in her place.

Q But you got the impression that she believed that she had that authority if she knew the answer?

A In respect to authority, she had it. There was no denying that. She would run the day-by-day operations there if her father was not there.

When her father was there, even before any employee would speak or do anything, they would still have to go through Nada. And Nada and him would discuss things in their own language before reaching a decision.

Q Would customers ever complain to Nada?

A A hundred percent. They would all go first to Nada. When they would complain to any sales rep, any sales rep, their obligation was to bring them to Nada, didn't matter the

JULIO ESTRADA

circumstances of what the issue was or the size of the issue. It would have to still go to Nada. They will have to go to Nada's office, sit down with her.

Q So she had an office; so she wasn't like working at the front desk, just answering phones; she had one of the two offices?

A That is correct. When you enter the trailer, the one on the right, was sitting in that office. And the one on the left, right before the room where the filing cabinets are at, that was where Nada used to temporarily reside at.

Q If a customer complained to Nada, would she try to work it out just with her and the customer?

A Yes.

Q What would she do to try to resolve a complaint?

A She would first get the customer's statements and get the customer's complaint, then call her father, say it in their language, speak

JULIO ESTRADA

in their language.

Then at that point, they would -- then at that point, that was like to give the father the heads-up, that they were going to call me into the office. And they would call me into the office. And she would run it by me.

And at that point, the cameras obviously were on in their office. So her father was in there now, listening to whatever Nada was telling me while the client is there and while I'm there. And we would go back and forth. And that's how -- that's how the conversation would start.

Q Would she resolve the matter herself or would she have you resolve the customer complaint or was it a mix?

A No. My situations with the customers in respect to that, it was always simple. When I used to walk inside, I used to ask the customer in front of Nada because Nada obviously always wanted to feel in that way, she

JULIO ESTRADA

was the boss, which was fine with me.

I used to ask them: Sir, I just want to ask you one question: Do you have copies of your paperwork? He or she. And he or she would say yes. And I would say: Do you have them with you? Yes, I have them with me. Can I see it? Okay. Thank you.

And then I used to tell her, tell the customer and Nada. And I used to go, Imma read it both of yous again. This is the retail buyer's order, this is the bill of sale, et cetera, et cetera, et cetera.

Then I would go: That's yours, correct? Here you go, sir, here's your document. Nada, I did my job. Thank you. I have to leave now.

Then she goes -- and she'll always tell me -- she knew that I was going to leave no matter what she told me. So she will always tell me, as I'm walking out, don't leave anywhere because we have to resolve this. Every single

JULIO ESTRADA

time was the same thing.

And I would go back into my office and continue what I was doing while Nada was in the back office with the client, the cameras and her father. And the reason I say the cameras because I don't know who else was watching besides the father.

Q Any conversation that you would have with a customer about a complaint, she would be present for?

A Any conversation that I had with any customer, anything -- any customer would approach me and they would see a customer speaking to me, whether it was Nada or her father, one of them would come and be present while I speak to the customer.

As soon as they saw a customer talking to me, they would come either -- even if I had the door closed, they wouldn't knock. They would just walk in which I would remind them that that's very disrespectful.

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And they would come in and just stand there and listen. Or they would take the customer -- or if I was done with the customer, before the customer walked down the stairs, they would bring them into the office.

Q So was Nada ever in your office when you were negotiating financing terms with the customers?

A Every time I signed out a customer, when I was signing out a customer at New York Motor Group, on my left, in that camera, will show you that Nada was sitting in that office while I was sitting in front of the customers, speaking to the customer.

Q Nada testified at her deposition that any time she was in your office, you would demand that she left?

A Absolutely not. And if you have enough ink, I could tell you the name of the other employees. They would tell you that any time that I signed up a customer and Nada was not in that office on my left-hand side and her father would see through that camera, he would call her and tell her that whatever it is they speak in they language to basically sit in there. I taught Nada how to do financing.

When I left that place and Nada was doing financing, I was teaching Nada how to do financing. I taught Nada how to bill out deals. I taught Nada how to submit deals. I taught Nada how to do financing. Nada was doing financing there.

And when Rahman came to that place, Rahman ended up buying that place with another individual. When they went into that place, the person that was doing financing there was Nada, taught by me, that I was taught by Kinney Galani.

Q She testified -- I'm just going to quote from her transcript -- "Julio was doing, you know, I found out later on, not while I was working. I didn't know while I was working that he

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was taking money from clients."

A Any client that I took -- you could stop right there. Let me tell you right now. Any client -- any customer that gave me 50 cents or even a dollar or a quarter, that money was given to Nada. It was on my left-hand side, then she went and obviously told her father. From any money that a customer had given me, if the customer gave me $50, $25, the father will give me. And $25, he will wait to come in and receipt.

So if he gave me $5,000, $2,500 was given to me. $2,500 was given to hold on -- to hold on to until the father came.

Q I'll just read the rest of that. "So Julio was doing, you know, I found out later on, not while I was working. I didn't know while I was working that he was taking money from clients. That's why I'm saying the last few months were really bad because that's when I found things out, you know. The

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clients would come complain to me, telling me that they gave Julio X amount of money, and they would ask me about it. I didn't know about it because all I was aware of was the client's down payment. And they would come complain to me. I would call Julio or direct them over there. He handled their complaint. So I'm guessing he gave them the money back or I don't know what he did. But he handled the complaint with that."

Is that what your experience at New York Motor Group was like?

A No. Imma put it in perspective. I'm not badmouthing Ms. Nada or anything like that. But I understand that -- not just Nada but many people that have worked with her father have the tendency to get -- to get this thing that's called amnesia. And they forget things.

What has happened is in -- throughout the time that I have spent there with Nada again or with Toby, any

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client, any customer that I sign, Nada was there. Any money that was receipted to me was under the presence of Nada.

Whatever it was, that had anything to do -- which the only thing they would charge the customer was $480. If you notice, that gentleman that's sitting towards your right, they was questioning me earlier; you, sir (pointing). I'm sorry. I'm very bad with names --

Q That's Mr. Lane, for the record.

A -- he gave me four money orders. Out of the four money orders, there was a paper there -- that one money order said $480. Four of them were for $1000 each and one said 480. That $480 was given to me. That $480, $240 always went to Toby. I first had to give it to Nada. And then Nada used to have to hold on to that until Toby came.

At that point in time, the reason I mentioned those $480 because I

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remember clearly that Toby wasn't around to give back the customer the money, nor was Nada. But I had my own stuff going on, personally, with my legal matters.

And I didn't have time to find out who was going to give me the money or not give me the money. That's why I mentioned to this gentleman, again, that I went -- and I went and paid that money out of my pocket. That's a fact.

Besides that, there was numerous times, in accordance to that information that Nada stated there, that she did not know what was going on and this, that and the third. Me and Nada had not just a business relationship. We had a personal relationship.

Me and Nada used to go out every night. Every single night with me, Nada and this other sales rep named Dewan and even Little Mohammed that I mentioned earlier that set up the prices.

In fact, my wife that I'm married to, she found explicit messages from Nada on my phone, the records from Nada's phone on my phone, stating stuff that Nada said to me that obviously was discovered by my wife.

Then my wife went to the dealership and approached Nada. And Nada has -- and my wife has text messages, pictures of these text messages, Nada begging her not to tell her father that me and Nada were in a relationship. It was discovered by my wife that we were in a relationship.

Q It sounds like you were pretty close.

Did that extend to your business dealings? Was she aware, basically, of your day-to-day interactions at work? Was she aware of what was going on?

A Miss, I don't mean no disrespect. There is no one in that establishment that could tell you that they didn't know anything, especially me, of what I was doing or not doing or

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didn't do or anything like that.

Anything I did do, pertaining to any business in that establishment, was under the influence and the watchful eyes -- and I say eyes because it was her father -- of her father and his daughter.

Q So, actually, going back to her daughter, did he have a practice of pricing cars lower than market value?

A Numerous dealerships do that, yes.

Q Why do numerous dealerships do that?

A To attract and draw the customer -- let me say explicitly: To lure the customer into the dealership.

Q Was that something that Mamdoh Eltouby did at New York Motor Group?

A Without a doubt, yes.

Q Was he aware of this practice and in control of it?

A That he was lowering the

prices of the cars in order to draw the customers into his dealership, so that that way, he could have the ability of obviously selling a car to a client, yes.

Q How often would New York Motor Group do a cash deal, all cash, no financing? Do you know how often that would happen?

A A cash deal? A cash deal in New York Motor Group, if in a month we did 30 cars -- if we did 30 cars in one month -- we never did two cash deals in a month. It was impossible.

So to answer your question, 99 percent of the deals that went out through the dealership were financed.

Q Is that because the customers didn't want to pay cash or was there a policy of steering people towards financing?

A Because -- in order for the dealership to recuperate the losses that it was facing of advertising said vehicles for those prices, they had no

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other option but obviously to give the opportunity to the customers to finance, so that a person like myself in the finance office would sell aftermarket products to the customers.

It didn't mean that I was gonna -- I was gonna be able to close all of them. But out of ten, I was gonna close nine every time.

Q So you had mentioned before that Mr. Eltouby never asked you about your arrest, the arrest in June 2012. At some point, though, in December was when you either indicted or plead to that charge. At some point, did he find out about it?

A I was arrested. Now that you mentioned that, I was arrested in -- in the dealership one time, in New York Motor Group. Sir, you had asked me earlier -- I'm sorry (pointing) -- I was in the dealership, in my office, in New York Motor Group. And they came and handcuffed me in the dealership.

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Q Do you remember when that was?

A No. I don't remember. But it happened. It was during the day. I remember clearly. And I had asked -- I remember clearly that I had asked the -- I asked the detective if he could not at least please put the cuffs on me now because there's clients, customers that are here. There's customers here. So at least, I'll go with you to the car. But, yes, I was arrested at New York Motor Group.

Q Was that in 2013 or before 2013?

A I don't remember the year. I know it did happen. It had to be in between when I was working there because I was in the office.

Q So I'm really interested in like around 2012, like there was the arrest at Auto Palace that you hadn't been asked about by Mr. Eltouby.

A I'm sorry. Excuse me. I

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don't mean to interrupt you. I got arrested there twice. The Queens DA's office went in there as well. I had a warrant. Imma tell you right now.

I had a case for Long Island. It was a case in Long Island. Some detectives came to get me. Then they arrested me. I came out within 24 hours. The bail was $75,000 in Long Island. I posted bail.

Q Do you remember when that happened, around? Like month, year?

A No. I know for a fact then after that, I came -- I came back to the dealership. And the Queens DA's office went to New York Motor Group and arrested me on allegations of committing identity fraud with a client that Toby had -- was there when I signed out the client. I remember.

I was pissed off 'cause -- I was telling the detective: Toby spoke to these clients. What are you talking about? And I remember. And the reason I

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say that is because, again, there's not a customer that sat with me, that when he or she got up, they was not interviewed either by Toby or by Nada.

Number One, Nada would sit there. And I was told that the reason they wanted Nada was in there so I could train her, which I know was all a lie, 'cause it was the reason Nada was there, was to watch me. And besides that, it didn't matter 'cause even in one point, that Toby had her there to watch me, it didn't matter. I had a personal relationship with her.

So in reality of Toby having her there, supposedly to watch me, he was defeating the cause. So I remember, clearly, that I had came back. And that happened in Queens.

Q When you said that he was there with the client who made the allegation of identity theft --

A Absolutely.

Q -- do you remember when you

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met with that client?

A I was working in Auto Palace. This is what happened. I was working in Auto Palace. Angel's sister was working as the finance manager at New York Motor Group. Angel's sister -- I don't know -- disappeared. Toby tells me, calls me -- I'm working at Auto Palace. I don't work for Toby -- can you do me a favor and please come over here? Because Angel's sister, she's always smoking, she's always doing this, she's criticizing, whatever. I go, Toby, just make it quick because I'm very busy. I just need you to please close out a customer for me because Angel's sister has disappeared again. And I need help in closing this client, working at Auto Palace. I said, Okay, not a problem.

So when I get there, and I get there, I know the finance office is still towards the right because before it was mine, it was being used by other people as the finance office which at

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this time was Angel's sister.

When I walk in, that client, they made the allegations -- they're supposedly was the fake client or it was the one that was committing the fraud -- was in Toby's office. And Toby was asking him -- Toby was talking to him. And then Toby walked the customer into the finance office and then brought me into Toby's office and asked -- I asked him, What happened with the customer? He goes, Nothing, you're gonna sign him up, but I just want to give you a heads-up of what's going on with the deal, I'm losing X amount of money, I need you to pick up X amount of money on the deal.

So I already know that Toby spoke to the customer. So I go and speak to the customer. I sign out the customer. I close the customer. I close the customer. When I was done with the customer, like Toby always had a problem in paying me, I used to charge a customer a processing fee, each individual

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customer. It didn't matter who it was. I would charge them independently.

If I was working for Toby, it was only $480. If I wasn't working for Toby and I was coming from another dealership to close the deal, I would charge the customer, let's say, $1,200.

Q Was that because you knew that Toby wasn't going to pay --

A To pay, that is correct. So the customer -- I finished with the customer. Guess where the customer goes after signing the customer out: To Toby's office again.

So he goes right back into Toby's office, stays with Toby for another 10, 15 minutes, walks out of there. And I ask Toby, Why? And I already knew why the customer was in there. Toby brought the customer in there, I was under the impression it was to ask them if I asked him for any money or if I charged them for anything. Toby turned around and told me, Oh, no, the

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reason I had him in there is because I had to give him plates. I said, You had to give him plates? The guy just walked out without no plates.

So I knew for a fact since then, even before I worked with Toby, that that was going to be part of the package of working with Toby. Number One, that I was always going to have issues in getting paid because his reputation is known for that. He's had issues of paying people.

Number Two, any customer and every customer I spoke to, he was going to interview. So I was okay with that because I wasn't doing anything wrong, as long as I got paid, which I could say the only people that were paying me on time was Danny and Kinney Galani.

Q So just so I understand: You actually met with that client in New York Motor Group while you're still working for Auto Palace?

A I was an employee of Auto

Palace. I was asked to come on, do Toby a favor.

Q Was that the situation that led to the arrest that June 2012?

A A hundred percent. The auto crime division came in and arrested me.

Q You had mentioned before that you were never asked about the arrest. But that doesn't necessarily mean that Mr. Eltouby didn't know about it.

Did he know that there had been a complaint, filed with the police about this transaction?

A The cops called Toby and asked Toby to tell me to tell them when I was going to be in the building. And Toby told me -- Toby told me -- the officer, the arresting officer, had called Toby and asked Toby -- told Toby before he comes, before -- when he's there, can you please tell us so we could go and arrest him.

Toby turned and told me, in

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accordance to what he states, he told me to supposedly look out for me. Listen: These people just called me and they're planning on coming over here to arrest you. I'm letting you know so you could leave. And I said, Leave for what? Why would I want to leave if I haven't done anything? And he told me, Well, you should leave because they are coming to arrest you. And I didn't leave and I waited there.

And while I waited there, what I did was, I placed a couple of calls. And I told my wife what was happening. And I told her, Listen, everything that I just explained to you, Miss, that Toby told me this, that and the third that I'm about to be arrested, so I'm just letting you know so you could call my attorney, which is Mr. James Kousouros, so you could advise me as to what to do.

And he told me -- James, she called up James. James told her the same

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thing. He doesn't have to go anywhere because whether he leaves or don't leave, they know where he lives. I said, What difference does it make? Tell him to wait there. And I'll find out from the DA what's going on.

Then they came into New York Motor Group and arrested me in front of numerous dealerships and closed down the dealership.

Q And that was June 2012?

A No. I don't remember -- those two times, I don't remember the dates. But I know for a fact that happened inside that office.

Q Was that before Mr. Eltouby hired you or after?

A I was already working for him.

Q As far as the arrest that happened in Auto Palace when you were still working for Auto Palace, did Mr. Eltouby ever find out about that?

A About the arrest?

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Q Yes, the arrest that occurred a few months before you started working at New York Motor Group.

A Yes, of course. Let me explain to you: The car business is a big business. But it's a small community. Everybody knows each other, same way like when the gentleman was asking me about Rahman. And it's crazy. It's like a vicious cycle. Rahman worked there, Angel worked there, you worked there, Auto Palace. All you guys are like related one way, shape or form. Again, it's sad but it's true. Big business is a small community. Everybody knows everybody in the car business.

Q What does that mean in relation to this information?

A In relation to that information is that if he knew if I got locked up in Auto Palace, everybody knew. Not only did everyone knew. It came on Channel 1. It came out in the press. The Queens DA raided Auto Palace. And

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they closed down Auto Palace.

Q Yes. It's a small city.

A Yeah. And we were a couple of blocks from each other. And remember, keep in mind, Danny and Toby are competitors. They're not friends. They're competing against each other as to who sells more cars and this customer, if this one could screw this one over for this customer, they're gonna do so.

Q You mentioned before that when you were at Auto Palace, they had lost some of their relationships with their financing institutions?

A Auto Palace, yes.

Q New York Motor Group, did any banking institutions ever stop working with New York Motor Group while you were there?

A Capital One.

Q Do you know why?

A 'Cause Toby procrastinated in buying back deals that he -- that were discovered. I wasn't working for him.

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Capital One had made discoveries on numerous deals that he was there -- he was in violations with them in accordance to their lending laws.

And he was supposed to be buying back the deals. And Toby was under the impression, because he had a relationship with the agent, that everything was going well. It turns out that little did he know, the regional manager of that banking institution is the godmother of my child.

So I knew exactly what was going on with the deal. And I'm advising Toby. Toby, that's not happening, they're gonna shut you down, you're going to have to buy back the cars, and they're going to cut you off.

So once you give them the money, they're cutting you off. And he goes, No, They're not. So he kept playing with them, with Kenny McGee, from Capital One, playing with him, playing with him. In the long run, he gave him

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some money. And he was supposed to buy back the cars. He didn't. And nevertheless, by the time he gave him the money, they cut him off.

Q Did any other banks ever try to have the dealership buy back these loans?

A That happens numerous times. Whenever there's a complaint with the bank -- Imma give you an example -- like a bank like M&T, M&T -- a client, when he files a complaint, you see where it says plaintiff, it's the customer's name on top; and then where it says plaintiff, it says New York Motor Group, it says the name of the finance manager, the name of the lending institution. So usually, the attorney faxes that over to all parties.

At that point, a bank like M&T or a bank like Santander, they'll come and tell you straight out: Listen, this is what we received. They don't want to here if, bad, wrong. They don't want to hear anything. They just want you to do one thing: Is buy back the deal, period.

Q How often would New York Motor Group buy back those loans, specifically from M&T?

A If it's M&T, instantly. The reason being is M&T -- any dealership, especially if you're a non-franchise, if you have a bank like M&T and M&T is asking you to buy back the deal, that's something you're not even supposed to blink. You buy back, you cut that check immediately because M&T is not in the business of signing independent dealerships in the City of New York.

So if you're grandfathered into a situation like that and M&T is telling you to buy back the deal, guaranteed, the dealership is going to pay for the car, or a bank like Santander, they're going to pay for it, because those banks don't like to be associated with any negative press.

Q Did banks ever question or

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reject any applications because the sales price of the vehicle was much higher than the vehicle was worth? Is that something that would ever create red flags?

A No. The banks, they don't go in accordance to that. They go in accordance to making sure that they reach the guidelines in respect to the loan-to-value and obviously how much money the customer is putting down and the customer's credit criteria. It just goes in accordance to the LTV.

As long as the loan-to-value reaches their guidelines and obviously the mileage of the car do not exceed or you're trying to sell the type of cars that a place like Auto Palace used to sell, which was frame-damage cars and stuff like that, the banking institutions don't want to be associated with anything negative that has to deal with hurting the client. They're not interested in making a deal. They just want clean, Kosher business, period.

JULIO ESTRADA

Q I just want to ask. I don't have that much more to go over.

My client, Shahadat Tuhin, he purchased -- it was a 2008 Lexus sedan.

A Burgundy.

Q Do you remember him vaguely at all?

A I remember him like if it was yesterday.

Q I'm sure you've dealt with a lot of customers. What made him so memorable?

A Number One, the Carfax situation. That guy came with eight different people, representatives from his village, from his mosque, from all -- people of all walks of life. This guy -- the first guy he brought me, this guy has purchased eight cars. He has 800 credit score. Very, very good guy. He knows everything about the business. Can you explain everything to him?

So everything had to be

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explained first. Dealing with that individual, everything had to be, first, explained to his friends. So then the friend could now explain it to him in his language. So then him ask me the questions in English and then going back and forth.

Long story short: At that point, everything with him, it was numerous -- it was numerous times. It was over eight people, without exaggerating. It was not seven, it was not nine, it was eight people he brought in. All eight people wanted copies of the Carfax.

Now there's some dealerships. There's some dealerships with Carfax -- where the Carfaxes, they don't want to give or anything like that. In my cases, because I knew what was going to be the procedure, it was standard, that if you were buying the car for X amount of dollars, in order for me to do the deal with you, I have to

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after-sell you products; same thing like if you were buying a house. If you're buying a house, they're going to sell you different types of products, anything.

If you go to Best Buy before you cash out and pay for the products, they're going to offer you other products. Same thing. So I already knew. So I didn't care. We needed the Carfax. The Carfax could have been an accident. I would show the customer. Whatever it was, I would show them because I wanted to make sure that I billed with them our portfolio.

And they obviously believed in me because besides the fact that I was in a dealership, I'm an individual that I'm presenting myself. Then I have scars in my face and I'm in a dealership, that their credibility is being questioned by what they're reading in the Internet. Everybody has -- that a certain customer has come with numerous people.

So I wanted to make sure

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that I was working off a strength in the beginning. So by the time they came into my office, they wouldn't question anything that I'm trying to sell them because they were simple. I'm trying to sell you.

Q With Mr. Tuhin -- do you remember -- the day that he actually signed all of the financing papers, did he have people in the office with him?

A Absolutely. Two people. A chubby guy like myself -- well, he was heavier than me -- and another individual; skinny dude.

Q And they were there while he was actually signing the --

A Yeah, and speaking to them in their language.

Q Do customers ever sign more than one bill of sale for the car?

A There's two things that they sign. In respect to bill of sales, they sign a retail buyer's order and a bill of sale that supercedes the retail buyer's

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order because a retail buyer's order is -- all it is, is a document that has a break on the selling price and aftermarket products that you're buying, if any.

And those come together which is summed up as a subtotal. And they are superseded by the bill of sale. The bill of sale now comes with all the prices together as one.

Q I see.

MS. LINDERMAYER: I'm going to mark this as Exhibit 10.

(The above-referred-to document was marked as Plaintiffs' Exhibit 10 for identification, as of this date.)

Q Plaintiffs' Exhibit 10, is that the retail buyer's order or the bill of sale?

A This is the bill of sale.

Q Would someone ever sign more than one of those for the same transaction?

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A A bill of sale?

Q Yes.

A No. They would only sign one bill of sale. They would sign two retail buyer's order. When they get to the dealership, they're buying the car, a retail buyer's order, let's just say, for $15,000. By the time they go into finance, now they sign another retail buyer's order, that they're buying that same car, let's just say now for $32,000. Then they sign the last and final one, which is the bill of sale that supercedes, which is one bill of sale that they get a copy of. They get a copy of this. They get a copy of the retail buyer's order.

Q The selling price, what's the number listed by selling price there?

A On Exhibit 10, the selling price is -- before the warranty -- is $22,795.87. After the warranty is $25,885.87.

Q So that selling price, is

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that the price that the sales manager will negotiate with the customer?

A The sales manager -- I'm sorry. The sales manager has no clue about this because this was discussed only by the finance manager, the customer and Nada on my left-hand side.

Q Let me put it this way.

So if a customer goes into the dealership and they're dealing with the salespeople and they all agree on the actual price; and then afterwards, they'll be the question of the add-ons and the financing terms, where is the actual price that's agreed upon, reflected in that bill of sale?

Sorry. This is not a very well-stated question.

But whatever price is negotiated between the sales team and the customer, would that be the price that's reflected as the selling price?

A That's the selling price -- the agreed-selling price which is the

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advertised price. When they walk in, they buying the car for the advertised price.

Let's just say if it's $15,000, he or she signs, that I am willing to purchase this vehicle for a selling price of $15,000 before financing that is subject to end. In that same document, it states that is subject to primary lender's approval and must do finance without banking institutions in order to qualify for said price.

MR. SIMON: Exhibit 10 is called the bill of sale?

MS. LINDERMAYER: Yes, that's the bill of sale.

Q In this case, there is another bill of sale.

MS. LINDERMAYER: Can we mark this as 11, please?

(The above-referred-to document was marked as Plaintiffs' Exhibit 11 for identification, as of this date.)

JULIO ESTRADA

Q I know you'll explain to me the relationship between those documents. But I just want to start by asking you to read the selling price on this document.

A Selling price on this document is $28,209.

Q But what's next to the term selling price?

A The top price -- let me start off from the beginning. What I'm holding in my hand is Exhibit 11 which is an actual retail buyer's order. This is not a bill of sale.

Q So can you explain what the difference is between these two?

A Absolutely. The retail buyer's order states on the top of the page where it starts off with numeric numbers, it states what was the initial agreement selling price, which is the advertised price, in this case on Exhibit 11, being of $12,000.

Q So why did that sales price jump about $10,000?

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A Absolutely. I'll be more than happy to explain. From there, I charged the customer a processing fee -- I mean, an extended warranty, which is a service contract of $3,000. $90 VSI fee, which stands for vehicle security interest fee, of $90. That must be attached to all M&T Bank's deals that are done through M&T Bank.

Then I charged them for a vehicle replacement policy, which is an antitheft protection device, of $6,000 -- if I'm not mistaken, $6,068.37.

And I charged them a processing fee of a total loss package fee of $6,068.37. And the vehicle replacement policy was 472750.

So by the time this gentleman left my office, I charged them additional fees without including the taxes, nor DMV, an additional $13,817.87.

Q Just approximating, so the difference between the two selling prices would reflect all of those add-ons?

JULIO ESTRADA

A Yes, and then this order, which is Exhibit 10. Exhibit 10 supersedes Exhibit 11 because they all come together as one but still showing the same amount financed with the client's signature, stating that he or she is aware that this has taken -- has been injected with obviously numerous additional fees that he or she has agreed to take.

MS. LINDERMAYER: Just mark this, please, as Plaintiffs' Exhibit 12. It's double-sided. So that first page is actually not what I want to mark.

(The above-referred-to document was marked as Plaintiffs' Exhibit 12 for identification, as of this date.)

MS. LINDERMAYER: Just so the record is clear, Exhibit 12 is the Dealertrack track application in Shahadat Tuhin's case.

Q I just have a quick question

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about this, Mr. Estrada. You had discussed Dealertrack a little bit earlier with Peter Lane.

Who filled out the information in Dealertrack?

A Customer -- oh. Who submits the information?

Q Yes.

I assume Dealertrack is something you fill out online?

A Yes.

Q So who's actually entering the numbers?

A I'm entering the information as provided by the client. On Exhibit 12, this is a Dealertrack application. But it is an incomplete Dealertrack application that has been given or has been shown to me at this time because there's a part here that's missing which is the part that the customer filled out and signed, stating the issues.

Q That's correct, and that's a separate page. And I won't be asking you

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about that. But I'm glad that you were on top of that.

This is just the first two pages of the Dealertrack application, just so the record's clear, that it's not the complete application. So the customer's salary information would be included on this application; is that part filled out there?

A Yes.

Q What do you base that information on when you're entering it into the computer?

A The information provided by the client.

Q And when the client comes into the dealership, do they fill out their own application with New York Motor Group where they say, you know, their name, their address, phone number and their salary?

A Yes.

Q Do you ever crosscheck with that? Basically, when you're entering

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that, is it what the customer is telling you then, or is it what the customer filled out on that application that you're using?

A Yes. What happens is they fill out two applications. They fill out a credit application. And then -- they fill out a credit application. When they fill out their credit application and they give me -- before we close out the deal and I print out this application, I go over the information with them. And I enter the information into Dealertrack. Then I proceed to print it out, and I hand it, just like you've given me today.

But unlike you guys, I give them the complete application, which in this case is three parts, which one is missing. And I ask them to please go over all this information, make sure everything's accurate, so that that way, it doesn't -- it doesn't cause any problems in not just mailing but your future -- in respect to your future

JULIO ESTRADA

credit and the information you provided and in respect to the vehicle and your information on your credit application and if so, please sign. And then they proceed to sign if it's accurate.

Q And I'm sorry. I asked you a question. And I may have zoned out for a little bit of the answer.

With just the salary information, is that something that you'll check with the application they fill out when they first come in or is it something that you'll just go based on what they're telling you when they're sitting in your office?

A No. It goes in accordance to what they're telling me the application it is they fill out, the information they fill out with the client. That application, as well, there's a disclaimer in the bottom of the application, stating that anything you fill out will be submitted to the banking institution.

JULIO ESTRADA

Q You testified before that Mr. Eltouby reviewed all of the paperwork for every deal. Do you know whether he would review the Dealertrack application and if so, whether he would compare it to the application the client filled out?

A Before he signs?

Q At any point.

A At any given point, do I believe that Toby would go over that?

Q Yes.

A Absolutely not. He will not go over that.

Q He wouldn't even afterwards review the Dealertrack application?

A Not a shot.

Q So they would never look at it?

A No. It's not practice because this -- what happens is this is customer's personal information. So what happens: Once the customer signs these documents, it goes into their file.

So once they sign their file

JULIO ESTRADA

and Toby's done interviewing the client and asking them if you gave any money to J, at that point, Toby has no access to their folder. Their folder goes in for funding, which gets packaged out by the receptionist, that I failed to remember her name. It goes out for funding. And it stays in the folder. And it goes into the file.

If and when Toby ever reviews anything in that folder again, it would be at the time of any situation that may occur with, let's say, with processing in DMV or purchasing of the vehicle back from the banking institution.

Q So was reviewing the Dealertrack application part of his, like, interview with the client after the client would leave your office?

A Is it practice for him, for him to do that?

Q Yes.

A No, young lady. He does not

do that.

Q So you mentioned a few times that Mr. Eltouby seemed really concerned about customers giving you money. Was your impression that he was worried about the customer losing money or was he more worried about himself losing money?

A The customer losing money? No. You're asking me a question. So I believe that I reserve every right to answer it at my discretion; right?

Q Absolutely.

A All Toby was concerned about is making sure that if a dollar came in, that dollar went to him. Toby was not concerned if I charged the customer $10,000 or $15,000 extra or anything on that part in respect to the customer.

Toby was just concerned, making sure that the customer didn't give me any money and make sure that I charged him $15,000 extra and came Saturday when it was time to get paid, you figure it out, J. That's what Toby was concerned

JULIO ESTRADA

about.

Q What did he want you to figure out?

A As to how and when I was gonna get paid 'cause, in other words, what I'm trying to tell you is: That in respect to any dollar that a customer gave me, the reason Nada was there, it was to supervise me. It was to, actually, not learn anything. She wasn't interested in learning.

The only reason she learned how to do financing is because I told her that the way that your dad treats you and the way -- because they don't even get paid, his own kids. I told her you have an opportunity to learn something that you can use for the rest of your life, Nada, might as well learn something instead of texting on your phone and wasting your time.

So to answer your question, no. Toby did not review any of that to the defense of any customer. Toby

JULIO ESTRADA

reviewed any of that to make sure that anything I got from the customer went to him. And he would pay me at his discretion.

Q But he had access to all these papers, including the Dealertrack application, during that interview; he had access to it?

A Remember, initially when -- sorry. What's his last name?

Q Mr. Lane.

A When Mr. Lane had initially asked me, how was I submitting the applications to Dealertrack, I had to inform him: I was working under Toby's Dealertrack, Toby's Dealertrack log-in ID and password. So anything I submitted, Toby saw. Anything I submitted, Toby saw, Nada saw. They all saw. They all had access to this.

Q So specifically about Mr. Tuhin, do you remember whether M&T Bank tried to get the dealership to repurchase that loan?

JULIO ESTRADA

A No. This guy came back. This guy came back after he woke up from the ether, from his coma, whatever you want to term it as. When he woke up from his remorse of making that purchase, that obviously he realized probably exceeded his budget or his well-being, he came back to me. And he told me the following.

I would not be able to put my kids through college because of your fault. You are what's called a butcher. You have butchered me and have butchered the future of my children. And I asked him, clearly: Sir, when it was time to sign these documents, when you came here with eight people, did at any given time, I put a bat on that table or a gun and tell you or force you to sign these documents? No, I don't want the car.

Okay. Not a problem. So you don't want the car, nor do you want the loan. Let me bring you to the people that's in charge of that department.

JULIO ESTRADA

Guess what I did: I got up. And I brought them straight to Nada's office. And guess who was there: Mr. Eltouby. Toby was there, spoke to the customer. The customer wanted their money back. Toby didn't want to obviously assist the customer because the customer was not trying to compromise, which mean -- by that, I mean Toby was willing to buy back the deal from the customer.

Toby told him straight out: I'll give you your money back, every penny you put down. I'll give you your money back. Give me back the car. And I'll pay M&T. And you no longer have to deal with this deal. I'll give you everything.

At that point, you know what the customer did: The customer went -- I remember this like it was yesterday. The customer went. And he spoke to Rahman. He went and spoke to Rahman. He seeked help from Rahman. So he went from bad to

JULIO ESTRADA

worse. He went to Rahman, comes back. And guess who calls Toby: Rahman calls Toby and tells him: Listen, you're causing a problem, not just for yourself, but for the rest of the industry. Why? 'Cause now the client is outside with 25 other people with signs in they hands, stating that these people in New York Motor Group are thieves, they mislead you and they sell you cars and charge you more for your car than what the car is worth.

So now the other dealerships are starting to call Toby. And Toby's telling them: I'm willing to give this guy back his money, he doesn't want his money back.

Long story short: The guy comes. The guy comes back with the cops. The cops tell him: If you don't have a permit in the State of New York to protest, you have to leave. People leave. Toby still brings the customer back in the office and tells him:

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Listen, even though you did that whole fiasco, whatever the case may be, I'll still give you back your money, just give me back the car, and I'll give you back your money. And I'll pay off M&T.

Customer says: I don't want that. I want you to sell me the car at the price that it was originally sold. I can't do that. I don't own this car. And that's exactly where it last left off with that individual.

Q Do you remember how soon after Mr. Tuhin purchased the car he first came back to the dealership to complain?

A After like almost two, three months; something like that.

Q If he had come back on June 24th -- I know that this is a few years ago -- but would you have been there on that day?

A I was there when he came in, the first day he came in. He spoke to me first.

JULIO ESTRADA

Q So June 24th was two days after he signed the paperwork.

Were you there when he came back two days after he signed the paperwork?

A So when he was there, I could tell you, absolutely. When that man came in, I was there. So if it was two days, so then it was two days. It wasn't two months or anything because I was there. He spoke to me first.

Q Were you there when he came back to the dealership with the car and attempted to leave the car at the dealership and return it?

A No. He left the car outside. He left the car outside. He left the car outside. He tried to return it, yes. Toby told him at that time -- Nada told him because Toby wasn't around. Nada told him, We cannot take the car because we don't own it. She gave him Toby's cell phone number. They used to do that. They gave the customer Toby's

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number to get a hold of Toby.

The customer calls Toby, tells Toby what happened in his language. Obviously, the customer is frustrated. So he's speaking in a phone that Toby cannot understand him.

So Toby told him what we're going to do: Instead of us speaking on the phone, let's meet up in the dealership. So that's when he came to the dealership. Toby tries to bring me into the office so he could explain everything in front of me. Toby already knew how much I charged the guy, how many extra products I sold him and everything because keep in mind: In order for Toby to pay off a car, he has to get funded from the bank. The proceeds don't come from the skies. They come from somewhere. They come from the bank.

So if Toby knows for a fact what he was selling a car for and he's getting X amount of money funded from a bank and the contract says the customer

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put down $4,000, $4,000 plus what I got funded, plus what I actually owe for the car.

Q I'm sorry.

Did Toby understand that Mr. Tuhin wanted to return the car on that day?

A No. Toby understood it after the customer spoke to Toby over the phone. And then Toby came to the dealership and brought me in the office with the customer. And he told Toby I don't want to speak to you in front of this butcher.

Q Was this about a month before the protest?

A Yeah. Another protest happened afterwards.

Q But this conversation was before any of the protests?

A Yeah. This was in the beginning. Toby was begging him to buy back the car. Toby wanted to give him the money.

JULIO ESTRADA

Q So when he brought the car to the dealership, why wouldn't he buy back the car then?

A Because Toby was willing to buy back the car from the beginning because what I explained to Toby was the following: I told him, Toby, if you advertise 50 cars in a month -- right? -- and you sell 50 and two or three of them come back and they wake up from the ether, give them back they money because you still ahead of the game by 47 other clients. You give them back the money. And you go, you recycle it, you try to sell it again. But at least you get rid of the negativity. You get rid of that thing that's going to become a cancer. So that little tool, you get rid of it.

Q So why didn't he take your advice that day?

A In that particular customer, I could say that Toby tried to give him back the money. The customer didn't want it.

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Q But he had brought the car there.

A The customer wanted to keep the car at the same selling price.

Q I don't want to dominate your time today. A couple of quick things.

At the protest, do you remember when Mr. Eltouby arrived at the protest?

A Yes.

Q Did he drive very close to the protesters?

A No. What Toby did do that pissed off the protesters, it was actually wrong. He told the people, his porter, to go and wash the sidewalk.

Q The sidewalk where the protesters were?

A Yeah, to clean the sidewalk with a hose.

Q Did he spray the protesters?

A He came close to spraying them.

JULIO ESTRADA

Q And that was what Mr. Eltouby had told him to do?

A He told -- he told the porter to clean the sidewalk with the hose. And then the porter sprayed by where the customer was at.

Q Did you see Mr. Eltouby drive up into the dealership that day? Did you actually watch him when he was coming in?

A Yeah. Any time -- any time Toby would be there, any time Toby would get there, any time he would be there, they would announce on the speaker that Toby's here.

Q So I'm sure you knew when he was coming?

A I used to call him the pharaoh.

Q Did you, on that day, observe him drive up on the protest in his car?

A Yes. The protest was in the corner in front of the dealership. Toby drove -- this is the trailer. You come up the stairs and you enter the door. Toby drove his car right in front of the staircase of the dealer. The protest was in the corner. At that time when that was happening, the guy was already spraying the thing and stuff like that.

Q Did you see him before when he was turning that corner to pull into the --

A Yes. We were outside.

Q So did you see him drive past the protesters?

A Yes.

MS. LINDERMAYER: Please mark that Exhibit 13.

(The above-referred-to document was marked as Plaintiffs' Exhibit 13 for identification, as of this date.)

A That's my handwriting.

Q That is your handwriting?

A A hundred percent. It has numeric numbers on it that I do

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recognize, that I could tell you that is my handwriting.

Q So it is your handwriting. You anticipated my first question.

A Yes, it is.

Q Can you just let me know what those numbers represent?

A The first number states that it's $2,600.58. Then it's $6,929.28. Then it's $2,000. And then it's $630.

Q What is each of those numbers?

A Can I see it?

Q Sure. I'm going to hand you Exhibit 11.

A Not that I don't have any recollection. But it doesn't have anything pertaining to the retail buyer's order because usually in a situation like this, when I write down numbers like this, it's 'cause it's giving you a breakdown of where the buyer's order -- what the buyer's orders reflect in order for you to have an understanding as to

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why we reached that number.

Q So the $12,000 --

A The $12,160.13, I don't understand where that number would come from. It doesn't have any relationship to the retail buyer's order which is Exhibit 11. So going back to 13, I do recognize the handwriting. It was written by me. But what it was written for, I do not remember.

Q That's fine. I appreciate your honest answer about that.

MS. LINDERMAYER: The last one, No. 14.

A I remember this straight out. I could tell you what it says without even looking at it.

(The above-referred-to document was marked as Plaintiffs' Exhibit 14 for identification, as of this date.)

Q I don't want to offend you.

A No. Actually, there's no offense being taken. I should be

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actually very ashamed, which I am, of myself for making or writing a statement so foolish and disrespectful towards an individual that obviously was in emotional distress at the time being.

And it means that instead of taking his feelings into consideration, I was selfish at that point and made a statement -- and wrote a statement so disrespectful towards that individual. And for that, I am wrong and I am sorry for that.

Q So is all the handwriting on that page your handwriting?

A A hundred percent. That was written by me.

MS. LINDERMAYER: That's it for my questioning. Thanks for your time.

FURTHER EXAMINATION BY MR. LANE:

Q I just have a few questions to follow up on.

You had indicated that you

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left New York Motor Group in January of 2014. You worked there until January 2014. Why did you leave New York Motor Group?

A Why did I leave?

Q Yes.

A The reason I left is 'cause it was just too much uncertainty.

Q I had asked you: Why did you leave New York Motor Group in January 2014?

A The reason I left New York Motor Group is 'cause besides the fact that there was no -- there wasn't anything solid in respect to my pay, there was numerous things that were going on with that company. There were -- the signs were all negative, like in respect, they had situations going on with the department of consumer affairs.

There were clients -- they were coming in with numerous complaints, that the attention and the blame was being shifted to me. And I realized -- I

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sincerely realized that the way that everything was going at the end of the day, who was going to be stuck holding the bag was going to be myself, and they were going to shift the blame to me and everybody was just going to wash their hands and just say J did it or John DeSantos did it, whatever you want to call him, did it. It has nothing to do with us. And everybody will shine away from helping the customers.

And it just became a situation that everybody was pitting blame on everyone else instead of trying to fix the problems.

Q So you quit?

A I grabbed my stuff, packed it up, and I quit.

Q Did Toby fire you?

A Not a shot on earth. Toby begged me to stay there and asked the guy to take out my printer out of my box and my -- connect my PC again. And Dewan, I told him, before Toby got there, to bring

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me a box because Imma pack up my stuff because I am leaving.

And he told me -- then Nada called Toby and told him that I was packing up my stuff. And he told Nada that, yes, he knows because he saw. And I know all these things because, again, I was involved in not just a personal relationship but an intimate relationship with Nada.

So I know. So Nada told me what was going on. And Nada was under the impression that I was just bluffing so I could get finally paid from her father. And I packed up my stuff. And I already had called my wife. And my wife was outside.

And when my wife got outside, Toby was there. And he asked me why I was leaving. And I told him besides the fact of you not paying me, obviously all the things that are going on here and I see what you're doing, Toby, I'm not stupid, and I am aware of

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what's happening. I just prefer to leave. And besides that, I'm not going to forget.

I remember that was the day that I mentioned to him what had happened with the DA, when the DA came to the office and locked me up on the pretense that I committed identity fraud for a client that was interviewed by Toby, that I was there just to do a favor for him.

Then Toby turned around and told me in my face that I know you had nothing to do with that, that the person that did that was Angel. And Angel got paid for that. And I know. And I brought it up to Angel, Angel Santiago, which was his former manager. And I brought it up to Angel. And I told Angel in his face: This is what Toby told me that he stated to Angel.

Q When did Toby tell you that he knew Angel --

A The day that I was standing behind the table in front of Toby. And

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Toby told me. I told --

Q This was the day you were quitting?

A The day that I was going to leave, the same day. It was in the early afternoon. And I told Toby. I told Toby these exact words. It doesn't matter because at the end of the day, Danny, writing me out to the detective. Angel, I saw the text messages he was sending the DA. I was able to obtain that. And you lied numerous times to the DA in respect to me.

But what I do know and besides all you people, I know that I never lied about you guys, I never ratted on you guys, and I never talked to you -- about you guys in order to get a better plea from any DA's office.

And I grabbed my stuff. And I told him no hard feelings and if there's anything I could help you with, please feel free to call me and get ready for voice mail therapy because I will not be answering. That's exactly what I told him. And I got up. And I walked out.

And then after that, when I left, he was calling me, telling me that he had this customer there, that customer, this customer, asking him for money. I told him, Toby, listen to me: Don't play with me because I'll go over there and embarrass you. Don't act like you don't know who's in front of you asking you for what money. Do not try to play slick and make it seem like -- to show the customer, look, I'm showing you that I was just calling him. You know for a fact whoever's there and asking you for money, you know where that money is at. So get those people back their money so you don't have any further problems. And I just kept hanging up the phone and hanging up the phone.

Q Let me just back up.

You had testified before that he called you to come help him close a deal when you were still working for

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Auto Palace?

A I was working at Auto Palace.

Q And that was the ID theft?

A Identity theft.

Q When you were arrested at New York Motor Group --

A -- two times.

Q -- two times, one of the times, you said the first time you were arrested for an incident at a dealership on Long Island?

A Yeah, from one of the clients from Long Island. The client was from Long Island.

Q That was the first time you were arrested at New York Motor Group?

A At New York Motor Group.

Q And there was $75,000 bail that you posted on that?

A Yes, because there was a client from Nassau.

Q And did you return to work at New York Motor Group after that?

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A Yes.

Q Do you remember when that arrest was?

A No.

MR. SIMON: Objection to the form of the question. I think the Nassau matter that was $75,000 bail, not $75,000 when he was arrested.

A The bail was $75,000.

MR. LANE: That's exactly what I just asked.

Q The bail on the arrest for the Nassau matter was $75,000?

A Yes, sir, $75,000.

Q You made bail, you returned to work?

A Yes, sir.

Q Can I ask you how you made bail?

A I posted property.

Q You don't remember when that arrest was?

A No, sir. But it's public information. It's available.

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Q Yes. I'll figure out the dates.

What I'm trying to understand is: You went back to work, you were arrested at New York Motor Group?

A Yes. I went back the next day.

Q And how many more months did you continue working after that?

A It was like two, three months before my next arrest. It was like three months after that. They arrested me again. That was the Queens DA's office.

Q That was the arrest for the ID theft?

A ID identity which is the auto crime division.

Q And, again, you were arrested. And that is where you had testified -- and I just want to be clear -- Toby got the call from the police, saying that they were coming to

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find you?

A Yeah. The police officer called Toby, told Toby when he's there, call us and let us know. Toby brought me into his office and told me of said information to make it seem like he's looking out for me, so that that way, I could leave. And I told him I'm not going anywhere because I don't have anything to hide. I didn't do anything.

Q After that arrest, were you able to make bail again?

A Yes.

Q And then you returned to work?

A Yes, sir.

Q And how many months between that arrest and when you left?

A Almost a year.

Q So that was pretty early, that arrest?

A Yeah, because there were pending issues while I was in Auto Palace. Remember: The issues while I

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was in Auto Palace.

Q So that second arrest happened like winter of 2013?

A I don't remember the exact time. But I know for a fact I went back, and I stood there like almost another year.

Q So there's no doubt, in your mind, that Toby was aware of your arrest record while you were working for him?

A Even when the Queens DA's office raided Auto Palace, that I was an employee of Auto Palace, everybody in the whole industry knew what happened, not just from word of mouth. It was on New York 1 news. It was on the New York Times. It was on the New York Post. It was on numerous outlets.

Q That's something else I just wanted to clarify. You mentioned the raid at Auto Palace.

A That's the Queens DA's office. That was in 2011. That, I remember.

JULIO ESTRADA

Q I believe it's 2012. But you remember it as 2011.

A It was at the end of 2011.

Q Were you arrested on the day of the raid?

A No. You want me to tell you what happened?

Q Go ahead.

A They went in there and they told me straight out. The DA told me they interviewed everyone. They saved me, Danny and Ms. Jenny for last. Before speaking to Danny and to Ms. Jenny -- no. They spoke to Danny, to Ms. Jenny. They saved me for last. Then they spoke to me. The Queens DA office spoke to me. The detective, he told me clearly: Listen, I know you know what's going on here. I'm giving you an opportunity to make things right for yourself so you don't have any problems. So I'm only going to ask you this one time: Imma give you an opportunity to speak to us in regard to Jenny and Danny, so that that

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way to alleviate your situation and your complications in the future. And we could probably work something out to help you.

And I turned around. And I told the detective -- I told him: Sir, do you mind if I reach into my wallet? And he says, No, I don't mind. I reached into my wallet, and I handed the gentleman my attorney's card. And he told me, I knew you was gonna tell me that. I tell him: You also know that you cannot ask me any further questions? And he says that is correct. Take care. But also before you leave, remember that I gave you the opportunity to defend yourself. And don't forget: They're all going to throw you under, just like that.

Q That was a conversation you had --

A From the detective, Edwin Driscoll.

Q And that was at Auto Palace?

A That was at Auto Palace in

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my office, the day of the raid. They interviewed everybody in my office.

Q But you were not arrested that day?

A No, I was not arrested that day. What they did, they went in there was to gather evidence. At that point, then I went and retained counsel. And I realized what happened.

Q You had also testified that there were times when you were called by Toby to go work at Planet Motor Cars?

A That's when I was already working for New York Motor Group.

Q You didn't work regularly at Planet?

A No.

Q Is it correct that he would call you there to go help close a deal?

A Yes, sir.

Q Were they particularly difficult deals?

A Or the worst deals. The worst deals or any deals that would lose

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you money. The most deals they were losing money.

Q Who was losing money?

A The dealership was losing money and the selling price, what they were selling the car for and what they actually owed the car for and what the car was actually being sold for, so that the negative part in the deal that had to be picked up or the customer had excellent credit or the customer was from certain nations.

Q It was a bad deal when the customer --

A Any difficult customers, they gave them to me.

Q What did Toby want you to do?

A Close them.

Q How?

A With years of knowledge. It wasn't no set rules. It would change in accordance on a deal-by-deal basis.

Q Did he want you to make sure

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that he didn't lose money in the deal?

A Any deal that I got involved in, he would never lose money.

Q Why?

A Because I just -- I took -- prior to myself thinking that hopefully, one day, the amazing gods of Egypt were going to shine down on this pharaoh and one day, it could convince him to pay me. But unfortunately, for me, it didn't work out that way. So no matter how much money I made him, he never paid me.

Q Are you saying that when you were closing a deal, it was your goal --

A -- to maximize every deal.

Q -- to make the deal as expensive as possible?

A To sell as much product as I was allowed to sell under the guidelines and rules of the State of New York and banking institutions.

I wanted -- if they gave me $20,000 amount finance, I was going to have to finance $19,999.99. I would

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leave a penny less, so that that way I could go underneath the radar, that I didn't max it out at what you guys gave me.

Q Is it true that what you're saying is that Toby wanted you to sell these other products, service contracts?

A Service contracts, processing fee, vehicle replacement policy, LoJack, any of those aftermarket products, those are standard aftermarket products that are sold in any finance office.

At that point, any customer that was given to me, he knew that if it would have been a negative situation, I was definitely going to turn it into a positive because one thing I did do, I would -- again, if it was ten customers, I was gonna close nine. And I would give him copies of all their paperwork.

Q Did he know that you were charging processing fees?

A Absolutely. All the retail

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buyer's orders indicate that I was charging processing fees. Not only was I charging processing fees, I would make sure that the customer signed with their same signature that they had in their driver's license, signed the processing fee.

And then I had them sign a separate document, stating that these processing fees were not obligated, nor were they -- they were not required by the bank, nor were they obligated in order to obtain financing that they had to pay.

So in order to justify as to why, I was charging them that. I would obviously explain to them the full spectrum of the deal and close them on the deal.

Q And you would have people sign a statement that they understood?

A Absolutely. Every deal jacket -- that's called a deal jacket -- that's what contains the information of

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the client. There is what is called a customer package forms, that I would have customers signed as a rider form that states that none of these additional fees are required by any banking institution in order to obtain financing with them, which will remove the banking institution away from the deal in respect to anything extra I charge them, 'cause like Santander, they charge you a processing fee, you cannot not pass that down to any client.

That's one of the pet peeve from the beginning. You cannot pass any fee down to any client.

MR. LANE: At this moment, I don't have any other questions.

EXAMINATION BY

MR. GROSSMAN:

(The above-referred-to documents were marked as Defendants' Exhibits 15, 16 and 17 for identification, as of this date.)

Q Good afternoon, Mr. Estrada.

JULIO ESTRADA

My name is Lance Grossman. I represent M&T Bank in three cases that are now pending in the District Court Eastern District of New York, entitled Shahadat Tuhin versus New York Motor Group, Simon Gabrys versus New York Motor Group and Nasrin Chowdhury versus New York Motor Group.

As counsel has told you, you are named in a number of these lawsuits as being a defendant, as well as New York Motor Group, Planet Motor Cars, Mamdoh Eltouby, Nada Eltouby and in some circumstances, Santander Bank and Capital One Bank.

A You're representing --

Q I represent M&T Bank in three of those which, just to be clear, it's Tuhin, Gabrys and Chowdhury. As counsel told you, I'm going to ask you a series of questions. If at any time, sir, you don't understand my question, I'll ask you to so advise me. And I'll do my best to rephrase the question.

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If you answer the question, sir, I'll interpret that to mean that you understood the question, and I'll move on to the next question. You understand that?

A Yes, sir.

Q During the questioning of prior counsel, you went into some detail on what you remember about Mr. Tuhin.

What I want to know, sir: Do you have any independent recollection of any complaints that Mr. Gabrys may have had with respect to his purchase of an automobile?

A Who's Mr. Gabrys?

Q Simon Gabrys.

A I remember Mr. Simon Gabrys. A gentleman, he did the financing with your banking institution, with M&T. He came into my -- he came into my office. He's like 5'4", 5'6". I remember him clearly, yes.

Q Do you remember any complaints he had about M&T Bank?

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A He wanted -- two things. He came into my office to tell me that he wanted to lower his interest rate with M&T Bank. And I told him: What do you mean lower your interest rate in M&T Bank? It's a primary bank. How much lower do you want to go?

And he told me -- he told me I knew you was going to tell me that, you douchebag. I reviewed you and told me that he found information in regards to Auto Palace with my name attached to it. That's the exact words.

And then he proceeded to tell me that he was gonna -- that I was -- I was gonna see him in court when he sues the living pants out of me, the living shit out of me.

Q Was this complaint to you after he had purchased the car?

A Yes, after he purchased the car.

Q Did he have any complaints about purchasing the car at the time that

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he came to see you about actually purchasing or financing the car?

A No, sir.

Q And Nasrin Chowdhury: What do you remember about her or her son? Any complaints?

A I remember after they -- they had the car, it must have been like five, six, seven months or something like that, the son telling me -- came in with the mother and the father and the son -- the son telling me that he went over all the documents with her mother. And I just -- before anything, I just want to tell you, you robbed my mother. And I told him: Sir, I don't mean no disrespect, but you were not here. Why would you say that I robbed your mother? Because what she financed the car for and what she bought it for, you obviously robbed my mother.

I told him: Sir, I don't mean any disrespect. Again, you were not here. And in accordance to my

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recollection, your mother that's right next to you seems like a very bright, intelligent young lady.

And she goes -- at that point, he told me: What makes you think that she's bright and intelligent? Not saying that she's not because she's my mother and I know she is. Because I told him: Sir, when you have an 800 score -- and then I scrolled down and I told him, excuse me, she had actually a 782 score. I told him when you have a 782 score, that's not something you pick up at the grocery store. You have to be very educated, not just to obtain credit like that but how to maintain. And then he said, Whatever, we're not talking about her credit. All I'm talking about is how you robbed my mother.

So I said, Okay. Please explain to me how you believe I robbed your mother. And he proceeded to tell me what his mother told him in regards to -- in regard -- her husband that was there

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and was there at the time of the purchase with her and how she felt.

And I asked her -- before they proceeded, I told them, Ma'am, can I just ask you a question? When you left this place, did you leave copies of your paperwork? She said yes. So did in any way, shape or form, did I tell you, you was going to receive anything in the mail, other than your payment book, of any documents you signed in here that you were going to receive it in the mail? And that's why I cannot give it to you today. No. I said, Okay, ma'am, thank you. Yes, sir, how can I help you? And I proceeded to ask them back. And then after that, we just went into conversation.

Q Was the son ever there prior to them coming to you five or six months later?

A No. At the time of purchase, no; only the wife.

Q Did anyone ever make any

allegations to you that there was any forgery of any of her documents?

A No.

Q Did anyone ever make any claims to you, with respect to Chowdhury, that any of her documents were fraudulent?

A No, sir. The only thing that the guy came to me, told me was that his mother had given me money to even lower the payment. And I told him, yes, sir, $4,000. And he said, No, she gave you $4,000-something -- I think it was 480 -- 4480. I said, Oh, yeah, that was $480 for the application. He goes, Well, that's what she gave you. I told him, Sir, but if you'd like, I could give you your money back right now, just so I don't have to deal with your disrespect of calling me any names without you knowing me, sir. He said it's not about the money, this and that.

And then he continued. He proceeded. And the next time I ever

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spoke to him again was when he called me -- he called me at the dealership -- at the dealership, making threats. And I told him: Can you just do me a favor 'cause the reason I told him is I said, I'm not used to people screaming at me or anything like that. And I told him: Can you just please come over here and come get your money now?

And that's when Nada asked me: But my dad's not here. How are we going to give him back money? I told him I don't care. Imma give him his money right now.

And by the time he got there, it took like two hours, then I sent the sales rep to go buy me four money orders -- excuse me. Yeah, four money orders. And then when they came back, they had four money orders. And then he told me there's still $480 left, missing, and I sent somebody to get me the fifth money order.

Q And they accepted those

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money orders from you?

A He took the money order and told me that it wasn't about the money. It was about the fucking principal.

Q Did you ever have any of the plaintiffs that I represent -- again, that would be Tuhin, Gabrys or Chowdhury -- sign any retail installment agreement in blank?

A In blank?

Q In bank.

A No, sir, not just them; any customer. Any client that I signed, just so that you know, any deal that I've ever done for Planet, for Auto Palace and even KG Suzuki or Planet Auto Mall because your guys were affiliated with them, any deal I've ever done with them, not only do they sign retail buyer's order, bill of sale, contracts, anything, and it all has to match their signature. And they all get copies of it, printed out. And that's for that exact reason, so I could be able to look at them in they eyes and

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tell them you didn't sign this in blank.

Q So there would be no documents that you would have any customer sign in blank?

A Never have, never will, not Asian, not Indian, not no one. It never, ever, ever -- it didn't ever matter. Whoever it was, excuse my French, I would give it to them raw. Here you go, sir.

Q As far as you know, was M&T Bank ever involved in the prices that either Planet Motor Cars or New York Motor Group advertised their cars for?

A No, sir. Like I said -- like I explained to the young lady that was speaking to me initially before and the gentleman as well, the attorneys at hand, any time M&T, dealing with M&T, I've been in the business in financing almost well over 10 years even since Day One.

I remember the name of the rep. His name is Kenny McGee -- not Kenny McGee. Kenny McGee is for Capital

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One. The rep from M&T, any time he would show up or anything like that. Again, they don't -- M&T's not part of problems. They don't want to hear it. You could tell them, Oh, no, we fixed the problem. They're not interested in fixing the problem. The complaint filed the complaint, they want you to buy back the deal, and that's it.

Q And that was your understanding of the reputation of M&T Bank?

A M&T Bank does not -- again, they get a complaint, you've got to buy back the deal. They're not interested in anything, oh, we fixed it, let me put you on the phone with a customer, they happy. They don't want to know happy. They just want to know is, when we getting the check and when you gonna have something in writing by this customer, that they are completely satisfied and that they got the funds, period.

Q Sir, I'm going to show you

three documents which have been labeled as Exhibits 15, 16 and 17. I'll just ask you to take a look at them.

A Simon Gabrys.

Q Do you see the title at the top of that document? What's that document entitled?

A This is a credit application that was submitted to Planet Motor Cars on behalf of Mr. Simon Gabrys by yours truly, Mr. John DeSantos.

Q Sir, do you see a signature on the second page? Actually, maybe it's the third page. The third page.

A The third page.

Q Do you know whose signature that is?

A Yes, of course.

Q Whose signature is that?

A It's the gentleman that's signed right underneath -- right underneath where it says, by signing below, you certified that you have read and agreed to the terms and disclosures

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on this page of this application which is the third page that I indicated before when I was initially questioned in respect to a Dealertrack application that was submitted, given to me earlier by this young lady that did an amazing job.

Q Did you see the person sign that document?

A Is that person here?

Q No.

Did you see the person sign the document when it was signed?

A In front of me.

Q I'm going to show you what's been labeled as Exhibit 16. Can you tell me the name on that document? And is that another Dealertrack document?

A Yes.

Q Who is that for?

A This is the gentleman -- last name, Tuhin; first name, Shahadat -- that called me the butcher.

Q Do you see the signature on the last page?

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A Sir, it's the same signature that you will find that matches in his contract, his retail buyer's order and bill of sale and all documents provided to that individual, by yours truly, Julio Estrada, also known as John DeSantos.

Q Did you see him sign that document?

A In front of me, sir, in front of two other friends that were with him that I did not bother gathering their names 'cause they were not part of the loan.

And I extended courtesy because they were not in the loan, just so there couldn't be statements stating that they was a language barrier, not an understanding, et cetera, et cetera. So I allowed two people that speaks his language that he felt comfortable with in the office with me.

Q And the last one is Exhibit 17. That's a Dealertrack document. Could you tell me the name on that

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document and then look at the third page?

A This was the young -- the lady by the name of Nasrin Chowdhury.

Q And the last page, sir, do you see a signature?

A Yes, sir. Again, right underneath where it says by signing below, you certify that you have read and agreed to the terms and disclosures on those pages of this application.

Q Did you, sir, witness her sign that document?

A Not only -- yes. Eyewitnesses, the camera's witness, Nada that was on my left-hand side and so did her husband. They were sitting on her left-hand side in my office.

Q Did you in any way, sir, stop or attempt to stop any of those three individuals from reviewing that document and the terms contained on that document before they signed?

A They cannot sign the contract before they read and sign this.

JULIO ESTRADA

Q Other than the Dealertrack document, I think, sir, you said you also prepared the retail installment agreements for these three individuals?

A For any individual in my office, yes.

MR. GROSSMAN: Could we have these two marked, please?

(The above-referred-to documents were marked as Defendants' Exhibits 18 and 19 for identification, as of this date.)

Q Sir, other than the M&T representative that you said you had some conversations with, did you ever speak with anyone at M&T Bank's finance department at any time?

A Did I ever speak -- I'm sorry?

Q You said that you had some conversations with an M&T rep that would occasionally come to the --

A Whenever I had to rehash a deal.

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Q Did you ever speak to anyone in the M&T finance department?

A Those decisions are with people of that type of credit criteria. That's an automatic decision, sir. You don't need to speak to any rep in particular. It's just automatic approvals or declines or counteroffers because of the credit criteria. You don't need -- there's -- there isn't anything to rehash.

Q Just so that you're aware, sir, the allegations contained in these lawsuits state that you, sir, entered into some type of criminal enterprise with M&T Bank to defraud customers.

The allegations were made against you, stating that you had some type of dealings with M&T Bank to inflate prices or to undertake actions which were meant to defraud customers. Is that a true statement?

A M&T Bank, they don't -- M&T Bank, the first introduction that M&T

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Bank gives to any customer is just their credit information. They submit it to them by a finance manager or a person in -- of privileged position of Dealertrack.

At that point, that's the only -- that's the -- the first introduction that M&T Bank has with any client or the dealership pertaining to that customer.

Then at that point, M&T Bank does not speak to the customer or anything like that until they get what is called -- if the deal goes through M&T Bank, they send out a -- excuse me -- payment booklet to the client. That is usually 45 days before first payments.

Usually, anybody can do it 30 or which is the max, 45 days. So in between then, between the time of purchase and the payment on any one of those three customers, was 45 days to first payment.

Q You stated that when the

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file jacket with the file papers would come into your office through Nada or a salesperson, you would take out the files and go through the terms with the potential customer?

A With the customer?

Q Yes.

A Yeah. The first thing I would pull out -- the first thing I would pull out is copies of their driver's license to make sure 'cause let's just say they made a copy -- they made a copy.

And then when the customer gives me the original license that I place on the right-hand side under the watchful eye of the cameras, what I usually would do is the reason I would still pull out the copy that was provided to me is to confirm that that was the same license that was given. Any document before proceeding on any deal, I would have to go over everything with the customer.

Q One of the allegations

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contained in these lawsuits, sir, is that you would prepare or your company would prepare retail installment agreements that would inflate the prices of vehicles beyond those that were advertised by falsely telling consumers that they're required to purchase additional products, such as contracts, warrantees and insurance policies, in order to obtain financing through M&T. Is that a true statement?

A No, sir. M&T does not require, nor any bank in the State of New York requires any customer to not just not purchase anything, nor warranty. There isn't anything that's required by a client in order for them -- he or she to obtain financing, are required to obtain from the dealership or any other party for that matter or any other fee they're supposed to be passed down to the client.

Q Sir, did you tell either Mr. Tuhin, Mr. Gabrys or Ms. Chowdhury that in order to obtain financing through

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M&T Bank, that they had to purchase additional products, such as service contracts, warrantees or insurance policies?

A No, sir, because then I would lose all my credibility because we're in a day and age that if I have an individual in front of me, let's just say excellent credit or even subprime credit, let's just say a 300 credit score. We're in a day and age that that individual is going to look at me in they eyes and tell me is that right. Okay, give a minute. And they're going to Google that, sir.

We're in a day and age that anything you say to a client is worse than being under oath because they look at you and they tell you: Is that right? And they're Google it while you're speaking to them.

So I cannot tell them anything that's going to misrepresent myself because then I'm going to lose all credibility as I'm trying to proceed and

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sell them a package of anywhere to 10 to $15,000.

Q One of the allegations, sir, contained in the complaint against you was that you would obtain payments from consumers by promising to arrange refinancing with banks or credit unions on more favorable terms without having any intention, without making any effort to actually arrange the refinancing; is that a true statement?

A In order for you to obtain anything with credit unions, we don't have the credibility of doing any credit union loans in our establishment. If the question is that: Have I promised or told customers that he or she have the opportunity of refinancing any loan. If I said I didn't, that would be misleading, sir. I have told them that numerous times because that's a fact.

You reserve the right to not just refinance any loan. You reserve the rights to pay off any loan because in the

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State of New York, there is no prepayment penalty. So you're not locked into any loan.

Q Did M&T Bank ever tell you that you had an obligation to tell any of the customers or consumers of either of those auto dealerships that they could obtain refinancing on more favorable terms in order to get financing with M&T?

A Can you repeat that question?

Q Sure.

Did M&T Bank ever tell you that you had to tell customers or consumers that they could refinance their loans at better rates in order to get a loan with M&T Bank?

A No, sir. M&T or no bank would tell you such a foolish thing.

Q One of the allegations contained in the complaint is that you or your company created service contracts and other product forms through the use of identity theft and preparation of

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forged documents that were never shown to or signed by the consumer. Is that a true statement?

A No, sir. Anything that -- on a very serious note, sir. Anything that was given to any client or presented to any client, not only was it printed out, sir, it was given to them for them to take a copy of.

If a document was not signed, he or she cannot leave my office with a copy of it to review it with anyone. They reserve the right to go over any financial terms and tell me, I'll tell you what, Imma speak to my advisor, Imma speak to my counsel, Imma speak to whomever. And I'll see you tomorrow. And then I'll let you know. So to answer your question, sir, absolutely not, not -- we've never done that, nor will we ever do such a foolish thing.

Q One of the allegations, sir, against you and the dealership was that

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on October 27th, 2012, that you obtained payments for Mr. Gabrys and induced him into signing a loan obligation with M&T with the false promise that Mr. Gabrys could return to the dealership in eight months to refinance the loan on more favorable terms. Is that a true statement?

A No, sir.

Q One of the allegations against you and the dealership was on an January 29th, 2013, you or the dealership on behalf -- the enterprise, which is defined, induced Nasrin Chowdhury into a loan obligation to M&T with the false promise that she could pay off the loan in full after six monthly payments with a final lump-sum payment to the dealership.

A Any client that I signed, sir, that -- when we get an approval from a banking institution, we get what is called -- we get paid on what is called reserves for marking up the rate.

So if we get an approval on

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a loan that's for 60 months, we reserve the rights to mark up the rate up to two and a half points. As long as I've printed on the contract, present it to the client, he or she signs.

At that point, the dealerships gets what is called -- in other terms -- called a kickback which is get paid on the reserves of the deal. So any client that I've ever told, that he or she shouldn't pay off the loan or anything like that, I wouldn't not say that.

What I say to them is the following: The reason it's not in our best interest -- the dealership, not the banking institution -- for you to pay off this loan within three to four months, is 'cause we get what is called a kickback from the banking institution which is a reserve.

So what I'm telling you, Mr. Client, is that the -- if you pay off the loan before that term, we gonna get

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what is called a chargeback by the banking institutions.

Q You used the term kickback. What do you mean by a kickback?

A Like a reserve. We get paid on reserves. Like for marking up the rates, if the client has not paid off the car by X amount of time, the dealership doesn't get charged, doesn't get that charged back to them.

Q As far as you know, that reserve is a legal --

A Of course it's legal. And not only is it legal, it's called a buy rate and a sell rate. It's like anything. In the contract, it's like even if you're purchasing a home, if you're purchasing a home and you get a rate of 3 percent and they mark up your rate, that's what's called marking up your rate of up to one and a half points or even two points, as long as it's disclosed at what rate I am selling it to the client.

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Q All the clients, these three plaintiffs, were all advised of what their rates were going to be?

A Not only were they advised, they left with copies of their documents. And, again, these are individuals that if I -- if I do a deal with a client and I tell you your payment's going to be $700, how long is my term? My term is 60 months. Okay. 700 times 60, how much money I put down? $10,000.

Obviously, I am giving the opportunity to the clients. And I remind them, mind you, that this is being recorded by audio and video in my office. And the owner's daughter is sitting on my left-hand side, that you and everybody in this dealership knows that's the owner's daughter 'cause everybody sees the sales rep and the management run to her any time they have a question.

Q Another allegation against you and the dealership, sir, was that you induced Mr. Tuhin into a loan obligation

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to M&T Bank with the false promise that the interest rate of 5.84 percent would drop to 2.17 percent and thereby decrease the monthly payments due for the remaining 54 months if he made the first six monthly payments on time. Is that a true statement?

A Well, induced is a very strong word. Can you define induced for me?

Q That's the term that's used by the plaintiffs against you.

A No.

Q Did you make any promises?

A Any promises -- any statement -- the only statement I gave them is that, again, you can pay off this loan at any given time because you're not locked into this loan which in that contract, it states it, that they're not locked into that. And they could pay off the loan at any time with no prepayment penalty.

Q Another allegation against

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you and the dealership, sir, was that on August 21st, 2013, that you obtained a payment of $4,480.81 from Shahad Kazi on behalf of Nasrin Chowdhury with the false promise that her M&T assigned loan would be paid off in full by the payment which was not true.

A No, sir. That's $4,480 that were given to me. They were given to me in front of the young lady, meaning Nada, Nada Eltouby. Those $4,480 -- $480 were for an application fee that I, myself, Julio Estrada, a/k/a J. Torres, charges individually, $408 for refinancing alone, which $240 goes to Toby, and $240 goes to myself. And $4,000 was going to be applied to that set loan.

At the time, when the deal -- we were not able to proceed for numerous reasons, which was her son coming into that -- into the trailer and being disrespectful, I proceeded to give back those people back their money.

Q Sir, I'm going to show you

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what's been labeled as Exhibit 18 and 19. And contained in these documents, sir, and direct your attention -- first, this document and ask you if you recognize what that document is.

A Yes, of course. This is a retail installment contract in the State of New York, provided by M&T.

Q For which person is that? Could you tell by looking at that document?

A Yes, Simon Gabrys. The gentleman purchased a Nissan Maxima. Last four of the VIN 8612.

Q Do you see on the second page, a signature in the middle of that page? It may be light. But do you see a signature somewhere of the purchase of Mr. Gabrys?

A Do I see his signature?

Q Yes.

A Yes. It's right underneath a column that states do not sign this contract below before you read it or it

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contains any blank spaces. And you're entitled to a completely filled out copy of this contract. So to answer your question, I do see it, sir, right underneath that column.

Q Do you remember if Mr. Gabrys signed that document?

A If he signed it?

Q Yes, if he signed it.

A Yes, sir.

Q Was all the information filled in when he signed it, sir?

A Yes.

Q I'm going to show you Exhibit No. 19 and ask you to look at this page. It has a P7 at the bottom. Looking at that, do you know what document that is?

A Yes, sir. It's the same document that I was shown in the previous -- in this case, being for Mr. Shahadat Tuhin.

Q Can I ask you to just turn the page, sir, and look towards the

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middle of the page?

A (Witness complied.) It's in the back of the page.

Q Yes, back of the page.

A Yes.

Q Do you see a signature there in the middle of the page?

A Yes, sir.

Q Do you know whose signature that is?

A It's Mr. Tuhin's signature.

Q Did you see him sign that document?

A If I seen him sign this, yes. He signed this in front of three other individuals, including myself being one and two other, his friends. They spoke the same language and advised him that he was getting a great deal and to proceed and move forward with the deal.

Q Was that document filled in when Mr. Tuhin signed it: The retail installment agreement?

A Yes, sir. This is the same

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individual that came back with eight different people.

Q One other question.

Did you cover up any of the numbers on Mr. Tuhin's or Mr. Gabrys's retail installment agreement so they couldn't see it before they signed it?

A No, sir. I left them in the office with his two friends going over it. And then I went into Toby's office and was listening to them as they spoke in they language. And they went back and forth.

And I told Toby watch how long, because Toby wanted to be there, because he heard what was going on, and this was one of his oldest unit on his lot. And I told him watch how long it's going to take these people to be able to call me back and to go sign this because it was every time. It was eight different times with eight different people. This man came back and forth.

Q Could you explain to me

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which documents get sent to M&T Bank in order for them to approve or disapprove or come back with a counteroffer on financing?

A Yes.

Q What gets sent to them?

A Either the Dealertrack application. The Dealertrack application, the three pages of the Dealertrack application, the bill of sale, the contract, the MB82 form that states that the lien is going to be perfected, the gap waiver and that's it.

Q With respect to Mr. Gabrys, Mr. Tuhin and Ms. Chowdhury, all of those documents were sent to M&T Bank for them to either approve or disapprove of the financing on each of those cases?

A In order for us to obtain funding, yes. Without that, they would not be able to be funded.

Q You answered one of the other attorneys' questions about the financial institutions that provided

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financing to New York Motor Group. M&T Bank you said was one; is that correct?

A Yes.

Q Santander?

A Yes.

Q Capital One Auto Finance?

A Yes.

Q Any others?

A Westlake Financial, AmeriCredit and People's Federal Credit Union. At that time, he had People's Federal, Teacher's Federal, Valley National, TD Bank, Chase Bank, Chase Subprime Bank.

Q Would there be times, sir, in which you would make an application for financing for a customer which would get denied by one bank and you'd resubmit it to another bank that would approve financing?

A There would be times like that. But these people that you're mentioning --

Q I'm just talking in general.

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A In general, yes, of course.

Q Why would one bank turn down financing and another bank provide the financing?

A Because they don't reach the criteria they're looking for, like they don't -- like, for instance, let's just say the loan-to-value that I'm asking for is not agreeable with that particular bank, the mileage on the car is not acceptable, the customer's credit criteria is not acceptable, his or hers debt-to-income is not acceptable.

Q Is it possible, sir, if one bank turned down financing, but another bank agreed to financing, they may have a higher interest rate in order provide the financing?

A Of course. In order to provide the financing, the rate would be much higher because the risk factor behind the loan are much greater. So they are giving you what is called counteroffer, like, in other words, I'll give you the approval but I'm going to give you the rate a little bit higher because -- I'm -- the customer's credit criteria doesn't match or doesn't meet our requirements.

Q So let's say --

A If one of my reasons they can be behind it.

Q But if the same documents were submitted to Santander, and they rejected an application, then submit it to M&T, and they approved it with an interest rate of five and a half percent, is there anything improper about that, as far as you know?

A No, sir.

Q You mentioned something, sir, in your previous testimony about sometimes something would come back with stipulations on a deal?

A Yes.

Q What do you mean by a stipulation on a deal?

A Like proof of residence,

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proof of income, proof of residence, proof of income, proof that open auto loan has been paid off, proof that Chapter 7 -- the bankruptcy has been satisfied, has been discharged, excuse me, depending on the situation. It varies in accordance to the client.

Q You had mentioned something about certain terms were cancelable? Do you remember that? Like a warranty was cancelable if Santander required you to itemize that?

A Yes.

Q Did every bank require you to itemize the --

A To itemize an extended warranty?

Q Yes.

A If it was part of the back end in advance, which means, let's just say in the front end of the deal, the bank is going to give you 120 percent but then they're going to give you in accordance to the book-out of the

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vehicle, what the car books out for, they're going to give you 10 percent of the LTV of the car and not exceeding $3,000, let's just say the max is $3,000 warranty, the reason the bank wants that is to make sure that the customer -- it's identifying the contract to the client.

Q So if you added in the add-on, sometimes the price that was being financed would exceed the loan-to-value ratio and a loan could be denied because of that?

A Yes, of course.

Q With respect to the financing with M&T, sir, did Nada ever have any conversations with M&T, as far as you know?

A Nada?

Q Nada.

A Nada was not submitting any applications. None of those applications were submitted by Nada. They were all done by myself.

Q Was Mr. Eltouby involved in

JULIO ESTRADA

any of them?

A In any of those -- submitting those applications?

Q Right.

A No, sir.

Q Sir, other than submitting the documents to M&T Bank, were you ever in discussion with anyone at M&T financing to approve or disapprove a loan application other than the presentation of the documents?

A No, sir. That's not -- it's not necessarily required -- it's not required when you do a deal with M&T Bank 'cause these people that you're submitting, their criteria is called system approvals. So you're not speaking to a human being; generated by a computer.

Q But occasionally, something would get bounced back?

A If you need to rehash a deal, then, yes, you call in and you speak to a buyer. And the buyer will

JULIO ESTRADA

tell you: Listen, you way out of whack here, you're looking for 140 percent, 130 percent, I will give you this guy as a first-time buyer. You're asking for too much money. The max I'm going to give you on this person is 80 percent of LTV.

So I'm going to have to reduce your selling price, let's say, by $7,000 because you cannot put a first-time buyer in a loan that you want their payment to exceed $700, meanwhile it's their first time getting a loan. The max I'll give is a $400 max payment. What? A $400 max payment. I'm looking at $700. No, sir, but I understand what you're looking for. But this is what I can give you because they're a first-time buyer.

Q Did you, sir, at any time when you worked for New York Motor Group ever conspire with M&T Bank to inflate prices of cars in order to make more money?

JULIO ESTRADA

MR. LANE: Objection as to form.

Q Do you understand the question?

A Of course I understand.

Q Did you, sir, ever conspire with M&T Bank to inflate prices of cars in order to make more money?

MR. LANE: Objection as to form.

Q You can answer.

A M&T Bank has -- doesn't have any bearing on any price or selling price or anything like that. M&T Bank is like a football goalpost. They're waiting for you to kick the ball through. And we just decide if we're going to let you go through with the field goal, yes or no. They don't ask you to submit applications.

They don't even give you a requirement, how many applications you've got to give us on a monthly basis like some banks do. Either you send us the

JULIO ESTRADA

deal or you don't send us the deal. And when you send us, it's up to our discretion if we want to approve it.

Q The discretion on the approval of any loan is based on M&T's criteria; not yours or the dealership's?

A It's based on M&T's criteria and obviously based on the customer's credit history.

MR. GROSSMAN: I have nothing further at this time. Thank you, sir.

EXAMINATION BY

MR. BRENER:

MR. LANE: You have my permission to go without me.

Q My name is Bob Brener. I represent Santander. I just have a few follow-up questions.

When did you first start working for New York Motor or Planet Motor. I know you were an independent contractor. But when was the first date you started?

JULIO ESTRADA

A For New York Motor Group?
Q Yes.
A I don't remember the exact date, sir.
Q I don't need an exact date. But was it 2012, 2013? Do you remember the year?
A It was in 2012. It was like the second week of November in 2012.
Q Then you said you left in January of 2014?
A Yes.
Q So that's the scope of when you were doing work on behalf of New York Motor?
A Yes.
Q And Planet Motor as well?
A Yes.
Q So prior to working there in November of 2012, did you have any kind of arrest record or any kind of criminal record? This is prior to November 2012.
A No, 'cause I was not convicted of any crime.

JULIO ESTRADA

Q Did you have any arrest record or any kind of run-in with the law before November 2012?

A My cases were for New York Motor Group -- excuse me, Auto Palace. It wasn't for Julio Estrada or for J Torres or John DeSantos, any of that. It was for -- in respect to the automobile industry, no sir.

Q I'm talking about in general. You start working for New York Motor in November of 2012.

Prior to that time, did you have any kind of arrest record or any kind of criminal history prior to November 2012 in any business anywhere at all?

A Yeah. I had a DWI.

Q Anything other than a DWI?

A No. Suspended license, minor things like that.

Q So prior to November 2012, you didn't have any pending arrest or any kind of indictment or anything?

JULIO ESTRADA

A Prior to 2012 --

Q November 2012.

A Yeah. I was already arrested for the situation with Auto Palace. That was pending. I was not sentenced. It was alleged that I was involved in a criminal enterprise situation with a dealership by the name of Auto Palace.

Q And that was prior to doing any kind of work on behalf of New York Motor Group or Planet Motor?

A Yes.

Q Anything else other than the Auto Palace issues?

A Never. I was working with Kinney Galani. And before that, I was working for over seven years at KG Suzuki with Kinney Galani. We never had any problems or issues, nothing.

Q And you testified prior that certainly, New York Motor, Planet Motor, Mr. Eltouby was aware of what was going on at Auto Palace when they asked you to

JULIO ESTRADA

work at New York Motor Group?

A Yes, sir.

Q You've had some criminal issues related to your work at New York Motor Group, Planet Motor; is that correct? Any kind of arrests, any allegations arising out of your work --

A Out of New York Motor Group, yes, sir.

Q Have there been any convictions as a result of your work at New York Motor Group or Planet Motor?

A Yes, sir.

Q What were the convictions? What specifically were you convicted?

A I was convicted of a client giving -- a client giving a gentleman that I used to work for by the name of Toby some money. And I was away in a trip in Dominican Republic. And they deposit the money into my account. They deposited the money into my account.

And when I came back to United States from being in Dominican

JULIO ESTRADA

Republic, they arrested me. The Queens DA's office arrested me.

Q What customer was that? Do you remember the name of the customer?

A No. I know for a fact that the money was deposit -- the money was deposited in my banking account at that time.

Q What was the charge? What were you convicted of? What specifically?

A I was convicted of -- having the customer -- of me -- the customer giving me money, to me, and me not providing any service to them. Meanwhile, I was in Dominican Republic. I was in Dominican Republic. And it had nothing to do with me. I was being told that that money was being deposited to me as to the money that was owed to me from Toby.

Q Any other charges, indictments, convictions other than that one, arising out of your work at New York

JULIO ESTRADA

Motor?

A No, sir.

Q You testified before that at some point, some more charges, complaints came in, because you said -- and correct me if I'm wrong -- once the dealership goes out of business, they just sort of focus on the individual?

A That's correct.

Q So were there more charges, complaints that came in --

A That I had been convicted of or charged of?

Q Yes.

A No. That was the one that I was just telling you about.

Q Other than charges, have there been other complaints as a result of your work at New York Motor Group that may not have resulted in a charge or a conviction or anything like that?

A No, sir.

Q So the only complaint or charge that you can testify about is that

JULIO ESTRADA

one that you're talking about --

A The money was deposited into my account. And I was under the impression -- again, I was in the Dominican Republic on vacation.

I was under the impression that I was being paid for the money that was owed to me by Toby. It was deposited in my account by his daughter.

Q So you were shown some captions here with a bunch of customer names on them. And you've gone through these names?

A Yes.

Q Are there any other names out there of any other customers or anybody else who's complained that you're aware of?

A No, sir. It was deposited in my account by Nada. Excuse me. Nada Eltouby-Smith because she's currently married.

Q Has the DA or anybody else come to you with any other kind of

JULIO ESTRADA

complaints from any other customers arising out of New York Motor?

A No, sir.

Q You were asked a series of questions by counsel for M&T Bank. I'm going to ask you some questions that might overlap with that. But I'm going to talk about Santander Consumer as opposed to M&T.

A Santander Consumer USA?

Q Yes. I'll just call them Santander.

Is it fair to say that Santander doesn't advertise for the sale of vehicles at New York Motor or any other dealership?

A No, sir.

Q They're not involved in the advertising of cars?

A None whatsoever.

Q And is it fair that Santander's not involved in the negotiation with a customer over a sales price?

JULIO ESTRADA

A No, sir.

Q They do not have any involvement at all? That's between the customer and the dealership; correct?

A That is correct. Santander has no bearing on any of those decisions.

Q Santander doesn't communicate with the salesperson during that negotiation process; right?

A No, sir. In fact, Santander's a little bit -- they're much circa than M&T in respect to the relationship they're about to establish with the client in respect to what I'm about to explain, which is they conduct a phone interview before funding, before paying out to the dealerships. They conduct a phone interview with the client, not just once but twice.

And they'll call you from different numbers and even call you from a private number to make sure you're not being coached by the dealership as to what you have to say during that phone

JULIO ESTRADA

interview.

Q Let me take a step back.

When the customer comes in, talks to a salesperson, they negotiate a sales price and that customer needs to finance, is the next step to submit the Dealertrack application or is it to go to the F&I person and talk about the aftermarket products? What happens first or is it simultaneous?

A Before anything, before -- first thing that happens is the application is -- first, the customer speaks to myself. At that point, I submit the application. Once we decide which loan they decide to go with if they don't want a loan with a warranty, they don't have to take a loan with a warranty. So a warranty is a cancelable item.

So if they decide not to go with a warranty, I proceed to do a deal without a warranty. I submit the deal. I get the deal approved. Once I get the deal approved, he or she signs the documents.

After reviewing them, they take copies of their documents. I package the deal up for the bank. Once the deal gets packaged, the bank is getting a hold of the client within 48 hours. They calling up the client and discussing -- they conduct an interview even more profound than the one that Toby does. They ask the client: Where did the money come from? The down payment? How did they give the money to the dealership? Do you owe any money to the dealership? Has any promises been made to you by the dealership? Did you get copies of your documents? Did you test-drive the car? Did you like the car? Did you have any problems, mechanical, with the car that was promised to you that still have not been fixed to the car?

Then the client answers all these questions: Did you get copies of

JULIO ESTRADA

the car? Did you provide it? I want to go over with you a couple of references that you have provided to the dealership.

They go over the references that were provided by the customers, their credit application, how much money they make. Everything that has been provided to the banking institution, Santander thoroughly goes through with the client. They conduct a phone interview before funding.

Q So getting back to my question, do you have a conversation as the finance person? Do you have a conversation with the customer before Dealertrack and other documents are sent to Santander?

A Yes, of course.

Q So in terms of the order, a customer comes in, talks to a salesperson, they negotiate a price, that customer then gets sent to you, the finance person; correct?

A Yes, sir.

JULIO ESTRADA

Q And then you talk about financing, and you talk about aftermarket products?

A Yes. The reason being is 'cause the approach with Santander deals or Capital One deals, their approach is totally different than a banking institution like M&T. I'm going to have to make sure that the customer's statements really meet with the criteria required by the bank which are the stipulations. I'm going to need pay stubs. I'm going to need bank statements. I'm going to need proof of residence. I'm not going to be able to use this proof of residence. There's too many other things that obviously have to be required up front with a bank like Santander, unlike a bank like M&T.

Q At that point when you're discussing financing and aftermarket products, Santander's not involved in that conversation that you have with the customer; right?

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A Santander is never involved with a customer in any conversation in any way, shape or form unless, of course, the customer has signed that contract and taken delivery of the contract. Then Santander calls them up and conducts a phone interview with copies of those paperwork in front of them.

Q So I'm just focusing right now on the discussion about the aftermarket products and the financing. You have a discussion with the customer, Santander's not involved in that; correct?

A No, sir.

Q And then at some point, you send the Dealertrack; and as you described before, you send the contract, the bill of sale to Santander; is that correct?

A Yes, sir.

Q And if it meets Santander's requirements, you either get a yes or no with respect to whether it's going to be

JULIO ESTRADA

funded or not; is that fair?

A That's correct, sir.

Q There's no discussion at that point with Santander; if it meets the formula or if it meets the criteria, you get a yes; if not, you get a no?

A That's correct, sir.

Q Before, you testified when you had questions from M&T counsel that when there are complaints from a customer, you said M&T doesn't want to hear anything; they just want the contract to be purchased back by the dealership; right?

A Immediately.

Q And that's the same thing with Santander?

A Santander.

Q They don't want to mess around; if there's an allegation by the customer, that Santander wants the dealership to repurchase the contract?

A Repurchase the contract immediately because Santander is

JULIO ESTRADA

basically a full spectrum, lending institution. They do prime and subprime. So it's actually -- it's the same thing like if it was M&T. You don't want any problems with these banks. So you buy back the deal immediately.

Q You talked about Mr. Freire before.

Did you have any communication with anybody at Santander about Mr. Freire?

A No, sir.

Q One of the people on this list is a woman by the name of Ms. Dong, D-O-N-G. Did you have any communication with Santander about Ms. Dong?

A No, sir. It's the young lady that purchased the Civic, if I'm not mistaken.

Q You had no communication with Santander about her?

A With the bank, directly, no.

FURTHER EXAMINATION BY

MR. GROSSMAN:

JULIO ESTRADA

Q Sir, just to follow up with counsel for Santander -- I don't know if I asked you this, but I also want to make sure this is correct-- was M&T Bank involved in any of the negotiations of the sales price or aftermarket products that a customer would buy or pay for a car?

A No, sir, nor do they have any knowledge of any.

Q Did you, sir, ever tell any customers that they can't pay cash for a car, that all cars have to be financed?

A No, sir.

FURTHER EXAMINATION BY

MS. LINDERMAYER:

Q You testified earlier that customers were given a copy of the retail installment contract after signing.

Were they ever given a completed copy before signing, like if they asked for one?

A Like if they wanted to go over -- like let's just say a customer

JULIO ESTRADA

comes into my office, I go over the whole deal with them and I go over what is -- your selling price is $10,000, your processing fee is 1825, your vehicle replacement policy is 273715, your extended warranty is $3,000, that brings the grand total to, let's just say, $25,000; plus your taxes and everything, this is how much you're financing, minus your down payment, this is your new amount that you're financing. All that information, he or she, is at the discretion, obviously, to write down and say, you know what, let me go home, go over this, and I'll come back tomorrow and talk to you.

So to answer your question, I wouldn't go over anything with anyone that they had to make a decision instantly, no. Some would sign and some would come back.

Q You would explain the terms to them before they would sign, but would they actually have the retail installment contract with all the terms in there before signing?

A Without a doubt.

Q And they would be able to take that completed retail installment contract?

A If they signed it?

Q Before signing.

A Before signing and didn't have their signature?

Q Yes.

A No. If -- let's just say they wanted to show it to their counsel and they wanted a copy of it to show it to their counsel, I wouldn't be able to to give them the original. I can give them a copy and you could take it to your counsel and go over it, and you come back. If you decide to move forward, you move forward. If not, obviously, I can't give you the printed contract because it's not signed. It cannot leave the premises with an unsigned contract because I'm responsible for each and

JULIO ESTRADA

every one of those contracts.

Q So like a retail installment contract that's completed but unsigned cannot leave the premises?

A You cannot leave the premises. Impossible. Anyone that states anything different is misleading you. You cannot leave that establishment with any contract that has not been signed by the customer and the finance manager.

Q So before signing, you would have explained what all the terms that would be on the contract would be?

A Yes, because at that point, I'm going to represent it to them and I'm going to put it in front of them. And in order for them to have an understanding of it, of what it is they're looking at, I would have gone over everything and given them a paper and a pencil. They could write down the information that I was giving them.

Q So if they wanted to shop

JULIO ESTRADA

around, it would be based on the information you gave them; they wouldn't have the actual unsigned contract?

A They would only get a copy of it, if they wanted to take a copy of the printed out contract.

Q So it would be a copy, but it wouldn't be signed; so it would be a copy of what?

A Like, in other words, I printed out the contract for you. And let's just say in this case, a Capital One contract. A Capital One contract is printed on the Law 553. It's printed out. I went over all the loan with you. I went over the contract with you. If you tell me I want to first go take this with me so I could show it to someone that has more experience or has better knowledge than myself and I want to show it to them first before I decide to sign it, I would tell you, fine.

But I cannot give you the original contract. Let me make a copy of it for you here. I make a copy, you take it. And tomorrow when you come back, before you sign it, you pull out your copy, I pull out mine. And you can compare that it's the same contracts. And you could sign it if you decide to sign it.

Q So it would be a photocopy of the unsigned but completed retail installment contract?

A Yes. But they cannot leave with the original contract if it's not signed.

Q And you had mentioned before that M&T would sometimes try to buy back loans. What were some of the reasons that they would want to buy back loans?

A M&T -- if a client calls the banking institution and tell them that I am not planning on making a payment, I'm not satisfied, I didn't understand, I didn't -- I am not interested in the vehicle, I'm not happy, the bank asks the customer one question: Did you go back

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to the dealership? Because you would have to go back to the dealership and discuss it with the dealership so they can cancel the loan out for you. And then we would be able to assist you.

At that point, a rep calls the dealership and tells them: Listen, we have this problem with this client, so that that way, you could assist them. Toby would get on the phone with, let's just say, M&T, what would you like for me to do for Mr. Thomas, let's just say. And M&T would tell them straight out: We want you to buy back the deal and deal with someone else. We're not interested because the client is not happy.

Q Did M&T Bank ever try to buy back the loan because the customer had said they had been defrauded?

A Any client that says to M&T, Santander or any banking institution that they have been defrauded, M&T automatically tells -- gets close to the dealership. They get copies of the whole folder. And they get copies, not just what we sent to them. They got out the original folder. They get the original folder. And they get copies of all the stuff. And then they come back. And then they tell the owner: We have a situation here.

Even though we have -- we've reviewed it and we are convinced a hundred percent, just like you, that the customer was aware and did get copies of their paperwork, we just don't want any association with this deal.

We are asking you at this time to buy back the deal. Or we would not be able to fund any future deals until this is resolved. That's the way they work.

Q Did M&T Bank try to buy back Shahadat Tuhin's loan?

A M&T called the dealership and informed them that the client had made a complaint and that this needs to be addressed and sent a rep down there to

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speak to Toby, spoke to Toby.

Toby then tried to call the customer. And the customer was stuck, that he wanted the car for that price. He was not giving back the car. He was going to hear from his attorney.

Q Do you remember when that happened? Was it before the protest, after the protest?

A The protest?

Q When M&T Bank tried to buy back the loan.

A The next day after the customer called me a butcher.

MR. GROSSMAN: I'm objecting to her form. I think you said it wrong.

Q I'm sorry. I misunderstood your answer.

A The dealership is responsible for paying it off.

Q Right. I'm sorry.

Did M&T ask the dealership to buy back the loan before the protest

JULIO ESTRADA

or after?

A The protest was -- let's just say the guy came in today and spoke to me, which was the day that he called me the butcher, the next day M&T had already called that dealership and told them that there's a problem with that deal and they were going to send a rep down there to go over the file with the owner, with the person in charge, which was Toby.

They sent the rep down there. When the rep was there with Toby, they brought me into the office. They spoke to me about the deal. I went over everything with them.

And that's when the gentleman told me that he remembers me from KG Suzuki, and even though we showed them everything, that the customer was explained everything thoroughly, he told us that he wants Toby to buy back the deal.

FURTHER EXAMINATION BY

JULIO ESTRADA

MR. LANE:

MR. LANE: Can I just get that marked?

(The above-referred-to document was marked as Plaintiffs' Exhibit 20 for identification, as of this date.)

Q Mr. Estrada, we've just marked that document as Exhibit 20. Do you recognize that document?

A Very well, sir.

Q What is that?

A This is a document that's provided to the clients before they sign, before they leave the dealership, stating that initially, when I was speaking to the gentleman that represents the fine bank of M&T, I was explaining to him that I usually explain to the customers that there is -- when we mark up the rate after getting what is called a buy rate from the bank and we sell it to the client at, let's say, two points or two and a half points higher, we get what is

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called reserves.

This is a document that I told the customer that by endorsement of this document, the undersign acknowledges that Planet Motor Cars against said buyer has a penalty of 6896, will be paid if the loan is paid off or refinanced through another lender before six payments are paid to the original lender.

Why? 'Cause paying off, just like it indicates on Exhibit 20 -- paying off the loan within six payment may cause the dealership loss. Dealer -- the dealer has negotiated this loan, subject to the buyer making at least six payments.

Q I was just explaining to M&T's counsel: This document was turned over by the dealership in discovery, part of the documents that were turned over in discovery by the dealership in Anwar Alkhatib's case.

So my question is: Was it standard to use this document in every

JULIO ESTRADA

transaction at New York Motor Group?

A If we charged -- if we marked up the rate, yes; if the rate was marked up. If the rate's not marked up, there's no need for a document like that because we're not going to include -- the dealership is not going to include any losses by them paying off the loan before six payments because there would be no chargeback because there was no markup of the rate.

Q The banks allowed you to mark up the rate?

A Every banking institution, all bank institution, not just for auto loans, mortgages, anything, anything you get what is called a buy rate, what you sell it for is totally different.

As long as you disclose it and document it in any contract with the client, you're allowed to -- if I get a loan for a customer for 72 months, I can mark up the rate up to 2 points. If I do it for 60 months, I could do it up to 2

JULIO ESTRADA

and a half points, max being 2 and a half points, not to exceed 24.99 percent in the State of New York, sir.

Q This document says that -- correct me if I'm wrong -- a penalty will be paid.

A It says that by you endorsing this document, which is the customer, the undersigned hereby acknowledges -- the undersign being the customer because there's a column that says for a buyer, for a cosigner to sign. So it says: By endorsement of this document, the undersign being the customer, acknowledges that a penalty of -- in this case, $6,896, will be paid if the loan is paid off or refinanced through another lender before six payments are paid to the original lender.

And anyone would ask: But why is that? Why? Because paying off the loan within six payment may cause the dealership loss. Dealership has negotiated this loan, subject to the

JULIO ESTRADA

buyer making at least six payments.

Q I guess what's unclear to me from reading this document is: Who would have to pay that penalty?

A The client. The undersigner.

Q So if a customer went in and refinanced with a different bank, they would pay a penalty of -- in this case, Mr. Alkhatib would have had to pay a penalty of $6,896?

A Not to the banking institution. To the company that's put on top of that document.

Q To Planet Motor Cars?

A Yes, to Planet Motor Cars, which is Exhibit 20.

Q Did you ever see Planet Motor Cars enforce one of these agreements?

A If the customer paid off the loan beforehand, have they ever been charged?

Q Yes.

JULIO ESTRADA

A No. Some have. And we would charge the customer whatever the penalty was.

Q How would Planet Motor Cars charge that once they refinance the loan?

A How we would charge them?

Q Right.

A We would call them and explain to the customer that we received a request of a lien release from the bank, stating that you paid off the car. And you actually paid it off before our agreed time.

So the issues wouldn't be with the bank or the customer. It would be with us, like it indicates at that part -- and excuse me for saying "us." I mean Planet Motor Cars, like in Exhibit 6.

Q Would you ever make those calls to tell a customer?

A To a client?

Q Yes.

A No.

JULIO ESTRADA

Q Who would call a customer and say we just got notice that there was a release of lien and that means you refinanced and so now --

A And you paid off the car before?

Q -- you owe us money?

A Whomever it may be that Toby may pick out to call, let's just say Nada or someone. Me myself, I wouldn't call --

Q You never --

A Even if he asked me to call, I wouldn't call because I wouldn't get paid on that. Why would I be calling?

Q When you were working as the F&I manager, you would give this document to people to sign?

A Yeah, absolutely. There's also -- I notice and in those folders, there's also forms that are missing. There's a rider forms that states that they're not obligated to take a processing fee, extended warranty or any